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Friday
June 5, 1992

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Briefing on How To Use the Federal Register
For information on a briefing in Chicago, IL, see announcement on the inside cover of this issue.

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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

CHICAGO, IL

WHEN: June 16; 9:00 a.m.
WHERE: Room 328
Ralph H. Metcalfe Federal Building
77 W. Jackson
Chicago, IL
RESERVATIONS: Call the Federal Information Center, 1-800-366-2998

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Presidential Documents

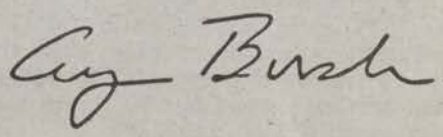
Title 3—

The President

Executive Order 12809 of June 3, 1992

Waiver Under the Trade Act of 1974 With Respect to Albania, Azerbaijan, Georgia, Kazakhstan, Moldova, Ukraine, and Uzbekistan

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 402(c)(2) of the Trade Act of 1974, as amended ("Act") (19 U.S.C. 2432(c)(2)), which continues to apply to Albania, Azerbaijan, Georgia, Kazakhstan, Moldova, Ukraine, and Uzbekistan pursuant to section 402(d) of the Act, and having made the report to the Congress required by section 402(c)(2) of the Act, I hereby waive the application of sections 402(a) and 402(b) of the Act with respect to Albania, Azerbaijan, Georgia, Kazakhstan, Moldova, Ukraine, and Uzbekistan.



THE WHITE HOUSE,
June 3, 1992.

[FR Doc. 92-13452
Filed 6-4-92; 10:53 am]
Billing code 3195-01-M

Editorial note: For the President's message to Congress and memorandum to the Secretary of State on trade with these states of the former Soviet Union, see issue 23 of the *Weekly Compilation of Presidential Documents.*

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 91-045-2]

Movement and Handling of Pork and Pork Products from Sonora, Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are allowing additional pork and pork products from Sonora, Mexico, including fresh, chilled, or frozen pork and pork products, to transit the United States for immediate export to other countries. Additionally, we are relieving certain restrictions on the in-transit movement of pork and pork products from Sonora, Mexico, that are currently eligible to transit the United States. We are taking this action based on investigations indicating that pork and pork products from Sonora present a relatively low risk of transmitting hog cholera, which exists in Mexico. This action will allow additional movements of pork and pork products from Sonora, Mexico, through the United States without presenting a significant risk of introducing hog cholera into the United States.

EFFECTIVE DATE: June 5, 1992.

FOR FURTHER INFORMATION CONTACT: Dr. John H. Blackwell, Senior Staff Microbiologist, Import-Export Products Staff, USDA, APHIS, VS, room 756-A, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7834.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations), among other things, govern the importation into the United States of pork and pork products in order to prevent the introduction into the United States of hog cholera. The regulations also stipulate the conditions under which animal products and materials may transit the United States for immediate export. Prior to the effective date of this final rule, § 94.15 of the regulations provided, among other things, that only animal products and materials eligible for entry into the United States could transit the United States. Section 94.9 of the regulations sets forth conditions for the entry of pork and pork products from countries where hog cholera exists. Among other things, § 94.9 requires that the pork and pork products:

(1) Have been treated in accordance with one of the approved procedures of this section:

(2) were prepared in an inspected establishment that is eligible to have its products imported into the United States under the Federal Meat Inspection Act; and

(3) shall be accompanied by a certificate issued by an official of the national government of the country of origin.

On January 31, 1992, we published in the **Federal Register** (57 FR 3729-3732, Docket No. 91-045) a proposal to amend § 94.15 to allow pork and pork products from Sonora, Mexico, that do not meet the requirements of § 94.9 for entry into the United States to transit the United States for immediate export to other countries if specific conditions were met. Those conditions were:

(1) Any person desiring to transport pork and pork products from Sonora, Mexico, across the United States for immediate export would have to first obtain a permit from the Animal and Plant Health Inspection Service (APHIS) Import-Export Products Staff in Hyattsville, Maryland:

(2) The pork and pork products would have to be sealed in Sonora, Mexico, in a leakproof container with serially-numbered seals approved by APHIS;

(3) The person moving the pork or pork products through the United States would be required to notify the pork inspector, in writing, of certain facts concerning the pork or pork products prior to their arrival in the United States;

(4) The pork or pork products would be required to transit the United States under Customs bond; and

(5) The pork or pork products would be required to be exported from the United States within the time period specified on the permit.

Our proposal invited the submission of written comments, which were required to be received on or before March 2, 1992. We received four comments. These were from two foreign-based airlines, a domestic pork industry group, and a veterinary medical association. One commenter supported the proposed rule based on the information provided in the proposal, two commenters expressed interest in moving pork and pork products through the United States under the conditions set forth in the proposed rule, and one commenter opposed the proposed rule. The commenter who opposed the proposal was concerned that, despite the proposed safeguards, it would be possible for pork products from other Mexican States to be transhipped through Sonora, and that these pork products could be diverted once they were within United States borders, thereby putting the health and prosperity of the U.S. pork industry at risk. In the proposed rule at 57 FR 3729-3732, we cited many factors that would reduce the risk of the above scenario actually occurring, including:

(1) Active support by the private sector represented by the Sonoran Pork Producers Council;

(2) control of movement of animals along Highway 15 and Highway 40 by Ministry of Agriculture and Water Resources (SARH) of Mexico inspectors; and

(3) enforcement of the Sonoran prohibition against swine and pork products from entering Sonora from other Mexican States. Additionally, as explained in the proposal, this rule requires that the person moving the pork or pork products through the United States adhere to strict requirements, including obtaining a permit from APHIS, transiting the United States within a time limit specified on the permit, and transporting the pork or pork products in a leakproof container with serially-numbered seals approved by APHIS. These actions will enable APHIS to track and monitor the movement of the pork or pork products to determine whether the movement complies with the regulations. For these and other reasons explained in the proposed rule, we have determined that

this final rule provides sufficient safeguards to prevent the introduction of hog cholera into the United States. Therefore, no changes are made based on this comment.

However, we are correcting an error in the proposed rule of January 31, 1992 at 57 FR 3729–3732. Proposed § 94.15(b)(2) provides that "[t]he pork and pork products are sealed in Sonora, Mexico, in a leakproof container, and the container remains sealed during the entire time that it is in transit across the United States, from the point of arrival to its exportation." However, as explained in the "Supplementary Information" section of the proposed rule, we further stipulate that "the pork and pork products be sealed in Sonora, Mexico, in a leakproof container *with serially-numbered seals approved by APHIS.*" Therefore, this document also corrects proposed § 94.15(b)(2) so that it is consistent with the "Supplementary Information" section of the proposed rule.

Effective Date

This is a substantive rule that relieves restrictions, and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. Therefore, the Administrator of APHIS has determined that this rule should be effective upon publication in the **Federal Register**.

Executive Order 12291 and Regulatory Flexibility Act

This rule has been reviewed in conformance with Executive Order 12291 and has been determined not to be a "major rule." Based on information compiled by the Department, it has been determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This change to 9 CFR part 94 allows additional pork and pork products from Sonora, Mexico, including fresh, chilled, or frozen pork and pork products, to transit the United States for immediate export to other countries. Additionally, it relieves certain restrictions on the in-transit movement of pork and pork products from Sonora, Mexico, that are currently eligible to transit the United States. Based on current Mexican exports of pork and pork products, the Department does not anticipate a large volume of shipments transiting the United States. Mexico exported 900 metric tons of pork and pork products worldwide to countries other than the United States in 1989. This represented only about 0.03 percent of total world exports of pork and pork products. Assuming that Mexico would want to transit all of its pork and pork products destined for other countries through the United States, there would be approximately 50 truckloads transiting the United States annually (calculated using the 900 metric tons exported in 1989 as a parameter and assuming that each truck load is about 40,000 pounds). Using the average quoted frieght rates of $1.97 per mile and a distance of 513 miles between Nogales (Arizona) and San Diego (California),[1] the change will yield a total revenue of about $51,000 to businesses in the United States. Because the current Interstate Commerce Commission regulations forbid Mexican carriers from hauling the product beyond the border zone, small, specialized U.S. transport companies and brokerage houses will benefit.

At present, Mexico is the third largest trade partner of the United States. The United States exported $25 billion worth of goods and services to Mexico in 1989 and imported $28 billion worth of goods and services from Mexico. Seventy-five percent of the total trade was carried overland by trucks. Mexican pork and pork products transiting the United States would represent a small fraction of the total carried overland by trucks. However, facilitating export opportunities for the Mexican port industry may provide incentives for continued efforts to eradicate hog cholera from infected Mexican States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws, regulations, and policies that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging its provisions.

[1] This example represents the most likely route for transit of pork and pork products to other countries such as Japan, which imports such products from Mexico.

Paperwork Reduction Act

This document contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock and livestock products, Meat and meat products, Milk, Poultry and poultry products.

Accordingly, the regulations in 9 CFR part 94 are amended as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), NEWCASTLE DISEASE (AVIAN PNEUMOENCEPHALITIS), AFRICAN SWINE FEVER, AND HOG CHOLERA: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 is revised to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, and 134f; 31 U.S.C. 9701; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 94.15 is amended by redesignating the introductory paragraph and paragraphs (a) and (b) as the introductory text of paragraph (a) and paragraphs (a)(1) and (a)(2), respectively, and by adding a new paragraph (b) to read as follows:

§ 94.15 Animal products and materials; movement and handling.

* * * * *

(b) Pork and pork products from Sonora, Mexico, that are not eligible for entry into the United States in accordance with the regulations in this part may transit the United States for immediate export if the following conditions are met:

(1) The person desiring to move the pork and pork products through the United States obtains a United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors (VS Form 16–6). (An application for the permit

may be obtained from the Import-Export Products Staff, Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782.)

(2) The pork and pork products are sealed in Sonora, Mexico, in a leakproof container with serially-numbered seals approved by APHIS, and the container remains sealed during the entire time that it is in transit across the United States, from the point of arrival to its exportation.

(3) The person moving the pork and pork products through the United States notifies, in writing, the Plant Protection and Quarantine Officer at the United States port of arrival prior to such transiting. The notification must include the following information regarding the pork and pork products:

(i) Permit number;

(ii) Times and dates of arrival in the United States;

(iii) Time schedule and route to be followed through the United States; and

(iv) Serial numbers of the seals on the containers.

(4) The pork and pork products transit the United States under Customs bond and are exported from the United States within the time limit specified on the permit. Any pork or pork products that have not been exported within the time limit specified on the permit or that have not been transited in accordance with the permit or applicable requirements of this part will be destroyed or otherwise disposed of as the Administrator may direct pursuant to section 2 of the Act of February 2, 1903, as amended (21 U.S.C. 111).

Done in Washington, DC, this 1st day of June 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-13067 Filed 6-4-92; 8:45 am]

BILLING CODE 3410-34-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 19 and 20

RIN 3150-AA38

Standards for Protection Against Radiation

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; confirmation of effective date for information collection requirements.

SUMMARY: In a final rule published in the **Federal Register** on May 21, 1991 (56 FR 23360), the Nuclear Regulatory Commission amended 10 CFR parts 2, 19, 20, 30, 31, 32, 34, 35, 39, 40, 50, 61, and 70 to incorporate updated scientific information and to reflect changes in the basic philosophy of radiation protection. The Office of Management and Budget (OMB) approved the information collection requirements contined in part 19, "Notices, Instructions, and Reports to Workers; Inspections," on January 13, 1992, and approved the information collection requirements contained in part 20, "Standards for Protection Against Radiation," on January 24, 1992. OMB approval has not been obtained for NRC Form 4, Lifetime Occupational Exposure History, and NRC Form 5, Occupational Exposure Record for a Monitoring Period.

EFFECTIVE DATES: The information collection requirements contained in §§ 19.13 (b), (c), and (e) are effective on January 13, 1992. The information collection requirements contained in §§ 20.1101, 20.1202, 20.1204, 20.1206(b), 20.1206(f), 20.1206(g), 20.1301(c), 20.1302(c), 20.1501, 20.1601(c), 20.1603(a) (7) and (11), 20.1603(a)(9), 20.1603(b), 20.1703(a)(2), 20.1703(a)(3)(iv), 20.1703(a)(4), 20.1703(b)(2), 20.1703(d), 20.1901, 20.1902, 20.1904, 20.1905(e), 20.1906(d), 20.1906(e), 20.2002, 20.2006(a), 20.2102(a), 20.2103(a), 20.2105, 20.2107(a), 20.2108 (a) and (b), 20.2109 (a) and (b), 20.2110, 20.2201(a), 20.2201(b), 20.2201(d), 20.2202(a), 20.2202(b), 20.2203(a), 20.2203(b), 20.2204, and appendix F to 10 CFR part 20 §§ 20.1001 through 20.2401 are effective on January 24, 1992.

FOR FURTHER INFORMATION CONTACT: Charleen T. Raddatz, Division of Regulatory Applications, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3745 or Brenda Jo Shelton, Office of Information Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-8132.

SUPPLEMENTARY INFORMATION: The effective date for 10 CFR 19.13, Notifications and Reports to Individuals, and 10 CFR part 20 et al., Standard for Protection Against Radiation; Final Rule, was May 21, 1991, except for the additional information collection requirements contained in §§ 19.13 (b), (c), and (e) and §§ 20.1101, 20.1202, 20.1204, 20.1206(b), 20.1206(f), 20.1206(g), 20.1301(c), 20.1302(c), 20.1501, 20.1601(c), 20.1603(a) (7) and (11), 20.1603(a)(9), 20.1603(b), 20.1703(a)(2), 20.1703(a)(3)(iv), 20.1703(a)(4), 20.1703(b)(2), 20.1703(d), 20.1901, 20.1902, 20.1904, 20.1905(e), 20.1906(d), 20.1906(e), 20.2002, 20.2006(a), 20.2102(a),20.2103(a), 20.2105, 20.2107(a), 20.2108, (a) and (b), 20.2109 (a) and (b), 20.2110, 20.2201(a), 20.2201(b), 20.2201(d), 20.2202(a), 20.2202(b), 20.2203(a), 20.2203(b), 20.2204, and appendix F to 10 CFR part 20 §§ 20.1001 through 20.2401 which, as an additional information collection burden, were subject to approval by the Office of Management and Budget. The information collection requirements contained in these paragraphs were approved and became effective on January 13, 1992, under OMB clearance number 3150-0044 for part 19, and on January 14, 1992, under OMB clearance number 3150-0014 for part 20. Information collection requirements contained in §§ 20.2104, 20.2106, 20.2206 (b) and (c) are covered under separate OMB clearance packages and have not yet been approved.

Dated at Rockville, Maryland, this 28th day of May, 1992.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 92-13065 Filed 6-4-92; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Parts 205 and 1001

Existing Regulations and Programs; Regulatory Review

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Final rule.

SUMMARY: The Economic Regulatory Administation ("ERA") of the Department of Energy ("DOE") is revoking five regulations identified in implementing the President's January 28, 1992, Memorandum for Certain Department and Agency Heads on the subject of "Reducing the Burden of Government Regulation" ("President's Memorandum"). These five regulations were made unnecessary by Executive Order 12287 (January 28, 1981) and the final rule published by ERA on April 3, 1981 (46 FR 20508) which rescinded the DOE petroleum price and allocation regulations. Four of the five regulations revoked by this notice are also no longer applicable under the Petroleum Overcharge Distribution and Restitution Act of 1986 ("PODRA").

EFFECTIVE DATE: June 5, 1992.

FOR FURTHER INFORMATION CONTACT: Dorothy Hamid, Economic Regulatory Administration, 820 First Street, NE.,

suite 810, Washington, DC 20002, (202) 523–3034.

SUPPLEMENTARY INFORMATION:

I. Background

On January 28, 1992, the President issued the President's Memorandum which, among other things, required a review of existing regulations and programs with the objectives of reducing the burden of regulation and promoting economic growth to the extent that the law allows. The regulations were to be reviewed, with opportunity for public input, using the following standards:

(a) The expected benefits to society of any regulation should clearly outweigh the expected costs it imposes on society.

(b) Regulations should be fashioned to maximize net benefits to society.

(c) To the maximum extent possible, regulatory agencies should set performance standards instead of prescriptive command-and-control requirements, thereby allowing the regulated community to achieve regulatory goals at the lowest possible costs.

(d) Regulations should incorporate market mechanisms to the maximum extent possible.

(e) Regulations should provide clarity and certainty to the regulated community and should be designed to avoid needless litigation.

The President's Memorandum further directs that, to the maximum extent permitted by law, and as soon as possible, an agency propose repeal or modifications in existing regulations to bring them into conformity with the foregoing standards.

Pursuant to the President's Memorandum, ERA conducted a review of existing regulations over which ERA has primary responsibility for administering. ERA has identified five (5) regulations made unnecessary by the January 28, 1981 Executive Order and the April 1981 revocation notice in conformance therewith, which decontrolled crude oil price and allocation regulations contained in the Emergency Petroleum Allocation Act ("EPAA"), the Economic Stabilization Act ("ESA") and the Department of Energy Organization Act ("DOEOA"). Four of the five regulations revoked by this notice are additionally no longer applicable under PODRA, which limits the time periods for the commencement of civil enforcement actions by the ERA.

On March 2, 1992, the DOE published a Notice of Inquiry and Public Hearing (57 FR 7327) which elicited public comments on, *inter alia*, these specific regulations. Although a number of comments were received from the public, no comments were received relating to the regulations identified by the ERA.

II. Provisions Revoked

10 CFR 205.191, a provision setting forth the procedures to be used for a Notice of Probable Violation ("NOPV"), is being revoked because issuance of an NOPV to commence an enforcement action was entirely discretionary. See also 10 CFR 205.192(b). In fact, the ERA has not issued any NOPV for ten year or more. More importantly, however, PODRA, enacted in 1986, defines the term "commencement of civil enforcement action" as (1) the signing and issuance of a proposal remedial order against any person for filing with the Office of Hearings and Appeals of the Department of Energy; or (2) the filing of a complaint with the appropriate district court of the United States. Therefore, under the terms of PODRA, the NOPV is no longer an option for formally commencing an enforcement proceeding and 10 CFR 205.191 is therefore unnecessary.

10 CFR 205.199D, sets forth the procedures to be used for the issuance of an Interim Remedial Order for Immediate Compliance ("IROIC"). This procedure was also discretionary and is being revoked because it provides a mechanism for dealing with continuing or future violations. The President's January 28, 1981 executive order and subsequent final agency rule revoking all the price and allocation regulations make such preventive actions obsolete. Further, the PODRA precludes use of an IROIC to commence a civil enforcement action.

10 CFR 205.199E, a provision setting forth the procedures to be used for a Notice of Proposed Disallowance, Proposed Order of Disallowance and Order of Disallowance, is being revoked because authority for the ERA to issue such notices no longer exists under the provisions of PODRA. In addition, such proposed orders related to transfer pricing issues arising from refiner pricing audits, and the last such case was completed and resolved more than six years ago. This regulation is, therefore, unnecessary.

10 CFR, part 205, subpart G, 205.90 *et seq.*, covers, *inter alia*, applications by motor gasoline retail sales outlets relating to the firm's supply obligation and the use of multiple allocation fractions by suppliers of allocated products. Because the underlying allocation regulations to which an application would be addressed were rescinded by the President's Executive Order of January 28, 1981, these regulations are unnecessary and hereby rescinded.

10 CFR part 1001 contains § 1001.1 and Delegation No. 0204–4 as an appendix thereto. Section 1001.1 specifies the separation of regulation preparation functions and enforcement functions within the Economic Regulatory Administration. Inasmuch as the authority of the ERA to promulgate petroleum allocation and pricing regulations no longer exists and the separation of the functions required under the DOEOA was effected through Delegation No. 0204–4, this part is unnecesssary. Furthermore, since responsibility for preparing and administering natural gas regulations which remain in force was transferred in January 1989 from the ERA to the Fossil Energy division of DOE (Delegation No. 0204–127; 54 FR 11437, March 20, 1989), there is no reason to maintain this part.

List of Subjects

10 CFR Part 205

Administrative practice and procedure, Petroleum allocation, Petroleum price regulations.

10 CFR Part 1001

Organization and functions (Government agencies).

Issued in Washington, DC, on May 21, 1992.

Chandler L. van Orman,

Acting Administrator, Economic Regulatory Administration.

For the reasons set forth in the preamble and under authority of 5 U.S.C 301, 42 U.S.C. 7191, 7254, title 10, chapter II, of the Code of Federal Regulations is amended as set forth below:

PART 205—ADMINISTRATIVE PROCEDURES AND SANCTIONS

1. The authority citation for part 205 continues to read as follows:

Authority: Emergency Petroleum Allocation Act of 1973, Public Law 93–159, Federal Energy Administration Act of 1974, Public Law 93–275; E. O. 11790, 39 FR 23185.

Subpart G—[Amended]

2. Subpart G (sections 205.90–205.98) is removed.

Subpart O—[Amended]

3. In subpart O, §§ 205.191, 205.199D and 205.199E are removed.

PART 1001—SEPARATION OF REGULATORY AND ENFORCEMENT FUNCTIONS WITHIN THE ECONOMIC REGULATORY ADMINISTRATION

4. Part 1001 is removed.

[FR Doc. 92–13110 Filed 6–4–92; 8:45 am]

BILLING CODE 6450–01–M

Office of Conservation and Renewable Energy

10 CFR Parts 417, 445, 456, and 490

Existing Regulations and Programs; Regulatory Review

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Final rule.

SUMMARY: The Department of Energy Office of Conservation and Renewable Energy is eliminating the regulations codified at 10 CFR part 417, entitled "Wind Energy Technology Application Program"; 10 CFR part 445, entitled "Industrial Energy Conservation Program"; 10 CFR part 456, entitled "Energy Conservation Service Program"; and 10 CFR part 490, entitled "Emergency Building Temperature Restrictions." The statutory bases for these regulations no longer exist.

EFFECTIVE DATE: June 5, 1992.

FOR FURTHER INFORMATION CONTACT: Simon Sidamon-Eristoff, U.S. Department of Energy, room 6C-016, 1000 Independence Avenue SW., Washington, DC 20007, (202) 586-0087.

SUPPLEMENTARY INFORMATION: The regulations codified at 10 CFR part 417, entitled "Wind Energy Technology Application Program," are being eliminated because the statutory authority for these regulations has lapsed pursuant to 42 U.S.C. 9205(i).

The regulations codified at 10 CFR part 445, entitled "Industrial Energy Conservation Program," are being eliminated because the statutory authority for these regulations, 42 U.S.C. 6341-6346, was repealed by section 3101(b) of the Omnibus Budget Reconciliation Act of 1986, Public Law 99-509 (October 21, 1986), 100 Stat. 1874, 1888.

The regulations codified at 10 CFR part 456, entitled "Energy Conservation Service Program," are being eliminated because the statutory authority for these regulations has lapsed pursuant to 42 U.S.C. 8229 and section 201(c) of the Conservation Service Reform Act of 1986, Public Law 99-412 (August 28, 1986), 100 Stat. 932, 943.

The regulations codified at 10 CFR part 490, entitled "Emergency Building Temperature Restrictions," are being eliminated because the statutory authority for these regulations has lapsed pursuant to section 104(b) of the Energy Policy and Conservation Amendments Act of 1985, Public Law 99-58 (July 2, 1985), 99 Stat. 102, 104. The regulations at 10 CFR part 490 may also be eliminated because Presidential Proclamation No. 4667, 44 FR 40629 (July 10, 1979), directing the issuance, implementation, and effectiveness of these regulations, which Presidential Proclamation was extended by Presidential Proclamation No. 4750, 45 FR 26019 (April 15, 1980) and further extended by Presidential Proclamation No. 4813, 46 FR 3489 (January 13, 1981), was rescinded [1] by Presidential Proclamation No. 4820, 46 FR 12941 (February 17, 1981).

List of Subjects in 10 CFR Parts 417, 445, 456, and 490

Energy conservation.

Issued in Washington, DC on May 29, 1992.

B. Reid Detchon,

Principal Deputy Assistant Secretary, Conservation and Renewable Energy.

For the reasons set forth in the preamble and under authority of 5 U.S.C. 301, 42 U.S.C. 7191, 7254, title 10, chapter II, of the Code of Federal Regulations is amended as set forth below:

PART 417—WIND ENERGY TECHNOLOGY APPLICATION PROGRAM

1. Part 417 is removed.

PART 445—INDUSTRIAL ENERGY CONSERVATION PROGRAM

2. Part 445 is removed.

PART 456—ENERGY CONSERVATION SERVICE PROGRAM

3. Part 456 is removed.

PART 490—EMERGENCY BUILDING TEMPERATURE RESTRICTIONS

4. Part 490 is removed.

[FR Doc. 92-13108 Filed 6-4-92; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 304

RIN 3064-AA61

Forms, Instructions and Reports

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) has revised its regulations which identify and describe two "report of condition" forms which must be used by insured banks to report information to the FDIC. The two forms are the Consolidated Reports of Condition and Income and the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks. The revision has been made to bring these regulations into conformity with section 122 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) and to replace outdated information in the former section with current information. The list of forms has also been revised accordingly.

Section 122 of the FDICIA requires the federal banking agencies to adopt regulations requiring the annual reporting of information on loans to small businesses and small farms by insured depository institutions in their reports of condition. The Federal Financial Institutions Examination Council (FFIEC) has separately published for comment a proposal identifying the small business and small farm loan information that insured depository institutions would be required to report annually.

DATES: Effective July 6, 1992.

However, the actual collection of small business and small farm lending information in the reports of condition filed by insured depository institutions will not begin until the FFIEC adopts final reporting requirements for such information.

FOR FURTHER INFORMATION CONTACT: Robert F. Storch, Chief, Accounting Section, Division of Supervision, (202) 898-8906, or J. William Via, Jr., Counsel, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: Section 122 of the FDICIA requires the FDIC and the other federal banking agencies to "prescribe regulations requiring insured depository institutions to annually submit information on small businesses and small farm lending in their reports of condition." As defined in section 3(c) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)), "[t]he term 'insured depository institution' means any bank or savings association the deposits of which are insured by the FDIC", and also includes an insured U.S. branch of a foreign bank. Thus, the reports of condition to which section 122 applies are the Consolidated Reports of Condition and Income filed by insured commerical banks and FDIC-supervised savings banks, the Thrift Financial Report filed by savings associations, and the Report of Assets and Liabilities of U.S. Branches and Agencies of

[1] 10 CFR 490.2 provided that the regulations at 10 CFR part 490 "may be terminated or suspended by the President at any time."

Foreign Banks filed by insured U.S. branches of foreign banks. (The Thrift Financial Report is not filed by any institution for which the FDIC is the primary federal regulator.) Section 122 further provides that the agencies' regulations "shall require insured depository institutions to submit such information as the agency may need to assess the availability of credit to small businesses and small farms."

Section 1006(c) of the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3305(c)) directs the FFIEC to "develop uniform reporting systems for federally supervised financial institutions." Thus, under the auspices of the FFIEC, the FDIC and the other federal banking agencies have developed proposed changes to the reports of condition filed by insured depository institutions in order to carry out the statutory mandate of section 122. The FFIEC has published these proposed changes to solicit public comment on the information that such institutions would be required to submit annually to the agencies on small business and small farm lending. (See 57 FR 21409, May 20, 1992.) Nevertheless, to comply with section 122, the FDIC must also make conforming amendments to its regulations on reports of condition.

Part 304 of the FDIC's regulations (12 CFR part 304) was issued pursuant to section 552 of title 5 of the United States Code (5 U.S.C. 552), which requires each agency to make available to the public information pertaining to the description of forms available or the places at which forms may be obtained, and instructions as to the scope and content of reports and other submittals. In particular, §§ 304.4 and 304.5(d) (12 CFR 304.4 and 304.5(d)) address the Consolidated Reports of Condition and Income and the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks, respectively. The FDIC is therefore revising these two sections of its regulations to bring them into conformity with section 122 of FDICIA.

In addition, a review of § 304.4 revealed that it contained outdated information about the Consolidated Reports of Condition and Income. This section of the regulation (and the related portion of appendix A to part 304—List of Forms) contained information on report forms for savings banks and other references that were obsolete. Section 304.4 and appendix A were therefore revised to remove the outdated information and replace it with current information.

Regulatory Factors

After considering the public comments that will be received in response to the May 20, 1992, publication of a notice of its proposal, the FFIEC will be adopting final reporting requirements for small business and small farm lending information in the reports of condition filed by insured depository institutions pursuant to section 122 of FDICIA. As a consequence, the revised rule contained herein does not in and of itself require any action by FDIC-supervised insured depository institutions beyond what the FFIEC will be requiring them to perform. This regulatory revision by the FDIC serves only to bring §§ 304.4 and 304.5(d) of the FDIC's regulations into conformity with the statutory requirement of section 122 of FDICIA and to update and correct section 304.4. Therefore, in accordance with the Administrative Procedure Act (5 U.S.C. 553), the Board of Directors may waive notice of proposed rulemaking and public comment.

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Board of Directors hereby certifies that the revised rule will not have a significant economic impact on a substantial number of small entities because the rule does not impose any actions or requirements on FDIC-supervised insured depository institutions other than what will be imposed on such institutions upon the FFIEC's adoption of final reporting requirements for small business and small farm lending pursuant to section 122.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the current Consolidated Reports of Condition and Income required of FDIC-insured state nonmember commercial and savings banks and the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks required of FDIC-supervised insured U.S. branches of foreign banks have been submitted to, and approved by, the Office of Management and Budget ("OMB"). (OMB Control Numbers 3064–0052 and 7100–0032, respectively.) Upon the adoption by the FFIEC of final reporting requirements for small business and small farm lending, the FDIC will submit the reporting changes to the Consolidated Reports of Condition and Income to OMB for its review. Similarly, the Federal Reserve Board, which collects and processes the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks on behalf of FDIC-supervised insured branches, will submit the reporting changes to this report to OMB for its review.

List of Subjects in 12 CFR Part 304

Administrative practice and procedure, Bank deposit insurance, Banks, banking, Foreign banking, Freedom of information, Reporting and recordkeeping requirements.

Accordingly, the FDIC hereby amends 12 CFR part 304 as follows:

PART 304—FORMS, INSTRUCTIONS AND REPORTS

1. The authority citation for part 304 is revised to read as follows:

Authority: 5 U.S.C. 552; 12 U.S.C. 1817, 1818, 1819, 1820; Public Law 102–242, 105 Stat. 2251 (12 U.S.C. 1817 note).

2. Section 304.4 is revised to read as follows:

§ 304.4 Reports of condition and income.

Forms FFIEC 031, 032, 033, and 034: Consolidated Reports of Condition and Income. Forms FFIEC 031, 032, 033, and 034 are quarterly reports, for insured state nonmember banks (except District banks) of different asset sizes or with foreign offices, as appropriate, in the form of an income statement, a reconciliation of changes in total equity capital accounts, and a balance sheet of the reporting bank. Supporting schedules request additional detail with respect to charge-offs and recoveries, income from international operations, specific asset and liability accounts, off-balance sheet items, past due and nonaccrual assets, information for assessment purposes, and risk-based capital. Reporting banks must also submit annually such information on small business and small farm lending as the FDIC may need to assess the availability of credit to these sectors of the economy. In addition, insured state nonmember savings banks must file quarterly a supplemental schedule which primarily contains interest rate sensitivity data. Consolidated Reports of Condition and Income must be prepared in accordance with the appropriate instructions contained in the Federal Financial Institutions Examination Council booklet entitled "Instructions—Consolidated Reports of Condition and Income." All insured state nonmember banks (except District banks) shall file their completed reports either electronically, on diskette, or in hard copy (paper) form with the appropriate collection agent for the FDIC as designated in the materials accompanying the report forms each quarter. The report forms, the instructions for completing the reports, and the accompanying materials will be furnished to all insured state

nonmember banks (except District banks) by, or may be obtained upon request from, the Call Reports Analysis Unit, Division of Supervision, FDIC, Washington, DC 20429.

3. In § 304.5(d), a new sentence is added between the first and second sentences to read as follows:

§ 304.5 Other forms.

* * * *

(d) * * * Insured branches must also submit annually such information on small business and small farm lending as the FDIC may need to assess the availability of credit to these sectors of the economy. * * *

* * * * *

4. In appendix A to part 304—List of Forms, the entry for "Form 8040/25: Consolidated Reports of Income and Condition for Savings Bank" is removed, and, in the entries for forms "FFIEC 031, FFIEC 032, FFIEC 033, and FFIEC 034: Consolidated Reports of Condition and Income", the reference "304.4(a)" in the third column is revised to read "304.4".

By order of the Board of Directors.

Dated at Washington, DC, this 28th day of May, 1992.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 92-13103 Filed 6-4-92; 8:45 am]

BILLING CODE 6714-01-M

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12 CFR Part 337

RIN 3064-AA80

Unsafe and Unsound Banking Practices

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: This final rule implements section 301 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA). Section 301 amends section 29 of the Federal Deposit Insurance Act (FDI Act) and adds a new section 29A. As amended, section 29 prohibits undercapitalized institutions from accepting funds obtained, directly or indirectly, by or through any deposit broker for deposit into one or more deposit accounts. Adequately capitalized institutions may accept such funds only if they first obtain a waiver from the FDIC. Well capitalized institutions may accept such funds without restriction. Section 29, as amended, also limits the rates of interest that may be offered by insured depository institutions that are undercapitalized or adequately capitalized. Section 29A requires a deposit broker to notify the FDIC of its status as a deposit broker before soliciting or placing deposits with an insured depository institution. The FDIC may require deposit brokers to maintain records relating to the deposits placed for each insured depository institution and to periodically submit those reports to the FDIC. FDICIA requires the FDIC to adopt final regulations to carry out the amendments made under section 301. Such regulations are required to become effective not later than 180 days after the date of enactment of FDICIA, that is, not later than June 16, 1992.

This final rule defines and clarifies key terms used in the statute. It describes the application process whereby adequately capitalized insured depository institutions may obtain a waiver from the FDIC authorizing the acceptance of funds obtained by or through a deposit broker. This final rule also prescribes the form and content of the notice which deposit brokers must file with the FDIC and imposes related recordkeeping requirements on deposit brokers.

The FDIC invites any interested party to inform the FDIC of difficulties uncountered as a result of the final rule. Suggestions for ways to improve implementation so as to lessen any unnecessary adverse impact are welcome.

EFFECTIVE DATE: This final rule becomes effective on June 16, 1992.

FOR FURTHER INFORMATION CONTACT: William G. Hrindac, Examination Specialist, Division of Supervision, (202) 898-6892 or Valerie Jean Best, Counsel, Legal Division, (202) 898-3812, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: The order of discussion in this section is as follows. First, the statutory provisions governing brokered deposits are described. Second, the FDIC's March 24, 1992 proposal for implementing those statutory provisions is discussed. Third, the comment letters received in response to the proposal are summarized. Fourth, a summary of the final rule is provided.

I. Statutory Provisions

Statutory Provisions Limiting the Acceptance of Brokered Deposits and the Payment of Significantly Higher Interest Rates

Prior to the enactment of FDICIA, section 29 of the FDI Act prohibited "troubled" institutions from accepting funds obtained, directly or indirectly, by or through any deposit broker for deposit into one or more deposit accounts. (For ease of reference, such funds are referred to an "brokered deposits" in this discussion and in the final rule). A "troubled" institution was defined by statute to mean any insured depository institution that did not meet the minimum capital requirements applicable with respect to such institution (*i.e.*, an "undercapitalized" institution). Renewals and rollovers of any amount on deposit in any such accounts were treated as an "acceptance" of funds under the statute.

The term "deposit broker" was broadly defined to mean (1) "any person engaged in the business of placing deposits, or facilitating the placement of deposits, of third parties with insured depository institutions or the business of placing deposits with insured depository institutions for the purpose of selling interests in those deposits to third parties" and, (2) "an agent or trustee who establishes a deposit account to facilitate a business arrangement with an insured depository institution to use the proceeds of the account to fund a prearranged loan." Several exceptions to this definition were set out in the statute. Most of the exceptions concerned depositors acting in certain, specifically described, fiduciary relationships (*e.g.*, the trust department of an insured depository institution, the trustee of a pension plan or other employee benefit plan, the trustee of a testamentary account, the trustee of an irrevocable trust, etc.).

The FDIC was authorized to waive the prohibition on the acceptance of brokered deposits on a case-by-case basis upon a finding that the acceptance of such deposits did not constitute an unsafe or unsound practice with respect to the institution applying for a waiver. The FDIC was also authorized to exempt certain insured depository institutions for which the FDIC had been appointed as conservator.

Prior to the enactment of FDICIA, section 29 regulated the interest rates that troubled institutions could offer. The restrictions on interest rates were achieved through the definitions employed in the statute. More specifically, the term "deposit broker" was defined to include "any insured depository institution, and any employee of any insured depository institution, which engages, directly or indirectly, in the solicitation of deposits by offering rates of interest (with respect to such deposits) which are significantly higher than the prevailing rates of interest on deposits offered by other insured depository institutions having the same type of charter in such depository institution's normal market

area." The phrase "normal market area" was not defined by the statute, but generally it was construed by the FDIC to mean the area in which an institution was advertising a particular type of deposit.

As a result of this definitional provision, an insured depository institution and its employee(s), were deemed to be deposit brokers if they solicited deposits by offering interest rates that were significantly higher than the prevailing rates offered in the institution's normal market area. Since troubled institutions were not permitted to accept deposits obtained through any deposit broker absent a waiver from the FDIC, troubled institutions could not solicit deposits by offering rates that were significantly higher than the prevailing rates unless they first obtained a waiver. This provision was intended to prohibit "the solicitation of deposits by in-house salaried employees through so-called money-desk operations." H.R. Conf. Rep. No. 101–222, 101st Cong., 1st Sess. 402 (1989). It addressed a concern that emerged during various hearings—namely, that brokered deposit restrictions could be easily circumvented by in-house solicitation or general newspaper advertising of high rates. See "Problems of the Federal Savings and Loan Insurance Corporation: Hearings Before the Committee on Banking, Housing, and Urban Affairs of the United States Senate," (part II) 101st Cong., 1st Sess. 230–231 (1989) (statement of Mr. Seidman); "Insured Brokered Deposits and Federal Depository Institutions: Hearing Before the Subcommittee on General Oversight and Investigations of the Committee on Banking, Finance, and Urban Affairs of the House of Representatives," 101st Cong., 1st Sess. 17 (1989) (statement of Mr. Murkowski), *id.* at 60–61 (statement of Mr. Fleischer).

Section 301 of FDICIA, entitled "Limitations on Brokered Deposits and Deposit Solicitations," significantly expands the current limitations on brokered deposits. Under the statutory scheme created by FDICIA, "well capitalized" insured depository institutions may accept, renew, or roll over brokered deposits without first obtaining a waiver from the FDIC. However, "adequately capitalized" insured depository institutions are prohibited by FDICIA from accepting, renewing, or rolling over brokered deposits unless they first obtain a waiver from the FDIC. "Undercapitalized" insured depository institutions are prohibited from accepting, renewing, or rolling over brokered deposits. Upon the effective date of this final rule, the FDIC will no longer have the authority to grant undercapitalized institutions a waiver authorizing the acceptance of brokered deposits. (There is, however, a limited exception for insured depository institutions for which the FDIC has been appointed conservator.) Undercapitalized institutions that are currently accepting brokered deposits pursuant to a waiver issued by the FDIC, will be prohibited from accepting further deposits upon the effective date of this final rule.

FDICIA expands the interest rate restrictions set out in section 29 of the FDI Act. FDICIA increases the number of institutions that are subject to the interest rate restrictions due to the fact that the prohibitions contained in section 29, as amended, now apply to adequately capitalized institutions as well as undercapitalized institutions. In addition, FDICIA eliminates the FDIC's authority to exempt an institution (whether adequately capitalized or undercapitalized) from the interest rate restrictions through a waiver.

Undercapitalized institutions are prohibited under FDICIA from soliciting deposits by offering rates of interest that are significantly higher than the prevailing rates of interest on insured deposits (1) in such institution's normal market areas; or (2) in the market area in which such deposits would otherwise be accepted. Adequately capitalized institutions that accept brokered deposits pursuant to a waiver from the FDIC are prohibited from paying a rate of interest on such funds which, at the time that such funds are accepted, renewed, or rolled over, significantly exceeds (1) the rate paid on deposits of similar maturity in such institution's normal market area for deposits accepted in the institution's normal market area; or (2) the "national rate" paid on deposits of comparable maturity for deposits accepted outside the institution's normal market area. The "national rate" is to be established by the FDIC. FDICIA does not impose interest rate restrictions on well capitalized institutions.

FDICIA retains unchanged the definition of "deposit broker" currently set out in section 29 of the FDI Act. Consequently, the term "deposit broker" continues to include any insured depository institution, and any employee of any insured depository institution, which, directly or indirectly, solicits deposits by offering rates of interest which are significantly higher than the prevailing rates of interest offered by other insured depository institutions having the same type of charter in the offering depository institution's normal market area. The apparent effect of this provision is to limit the rate of interest an adequately capitalized institution may offer on this type of deposit, as well as those obtained through a third-party intermediary.

The FDIC recognizes the circularity of the law that says solicitation of deposits by offering significantly above market rates of interest makes those deposits brokered funds, and an adequately capitalized institution, even with a FDIC waiver, cannot pay a rate of interest on brokered funds that significantly exceeds market rates. This, however, seems to be the clear result of the statutory language and the consequence is that a merely adequately capitalized institution can never solicit deposits by offering rates of interest which are significantly more than the relevant local or national rate.

Statutory Restrictions Applicable to Deposit Brokers

FDICIA provides that deposit brokers are prohibited from soliciting or placing any deposit with an insured depository institution unless the broker has provided the FDIC with written notice that it is a deposit broker. The form and content of the written notice may be prescribed by the FDIC. The FDIC is authorized to require, by regulation, each deposit broker to maintain separate records relating to the total amounts and maturities of the deposits placed by such broker for each insured depository institution. The FDIC may also require each deposit broker to file separate quarterly reports with the FDIC relating to the total amounts and maturities of the deposits placed by the broker for each depository institution during the applicable quarter.

The FDIC is authorized to impose by regulation or order, such additional restrictions on the acceptance of brokered deposits by any institution as the FDIC may determine to be appropriate.

II. Description of Proposed Rule

On March 24, 1992, the FDIC adopted a proposed rule designed to implement the new statutory scheme for regulating brokered deposits as prescribed in amended section 29 and new section 29A of the FDI Act. (57 FR 11442, April 3, 1992.) For the most part, the proposed rule tracked the language of the statute. The proposed rule did, however, offer definitions for the terms "well capitalized," "adequately capitalized," and "undercapitalized." In order to fully effectuate the interest rate restrictions

imposed by FDICIA, the proposed rule outlined a method of calculating the "national rate" created by FDICIA. In addition, the proposed rule clarified the meaning of "significantly higher" as it relates to the interest rate restrictions. The proposed rule described a waiver application process. Finally, the proposed rule outlined registration and recordkeeping provisions applicable to deposit brokers. The specific provisions of the proposed rule are described in more detail below.

Capital Level Definitions

The new statutory scheme for brokered deposits tracks the language of other provisions of FDICIA calling for progressively more stringent restrictions and supervision as capital levels decline. Thus, well capitalized institutions may accept brokered deposits without restriction. Adequately capitalized institutions may accept brokered deposits if they first obtain a waiver from the FDIC. Undercapitalized institutions may not accept brokered deposits. The term "well capitalized" and "adequately capitalized" are not defined in section 29, as amended. However, those terms are the same as found in section 38 of the FDI Act dealing with prompt corrective action. Further, section 29, as amended, indicates that the terms "undercapitalized" is to have the same meaning provided in section 38 of the FDI Act.

The precise regulatory definitions of the different capital levels identified in section 38 are currently being developed in consultation with the other Federal banking agencies. They will not be available until some time beyond the date when final regulations implementing the new brokered deposit restrictions must be in place. For consistency and in keeping with the evident intent of Congress, the FDIC intends to adopt the section 38 definitions of capital levels when they become effective.

In the interim, the proposed regulation defined "well capitalized" to mean an institution whose leverage and risk-weighted capital ratios are at least one to two percentage points higher than otherwise currently required by applicable regulations. The FDIC stated in the proposed rule that it intended to adopt a precise percentage point and possibly other elements, but desired to receive the comments of interested persons before selecting the appropriate measure. In addition, the proposed rule provided that a "well capitalized" institution must be CAMEL- or MACRO-rated 1 or 2 and may not be under any outstanding order or written direction to achieve a specific higher level of capital. An "adequately capitalized" institution was defined as one that fails to meet the standard for "well capitalized" but is not "undercapitalized." An "undercapitalized" institution was defined as one that fails to meet any regulatory minimums after giving effect to any chargeoffs or other capital reductions directed by a federal or state regulator, and would have included any institution which had been directed to achieve a specific higher level of capital and had not yet met that higher capital level. An exception was created for any institution that met the minimum regulatory capital requirements but had been directed or advised to achieve a specific higher level of capital. Such an institution would have been considered adequately capitalized if (1) it had committed to and was in compliance with a plan designed to achieve the specific higher level of capital directed or otherwise required, and (2) the plan had been accepted in writing by the regulator requiring the specific higher level of capital.

The definition of "well capitalized" has been changed in the final rule so as to exclude any institution that is in a "troubled condition". For purposes of this final rule, the term "troubled condition" is defined by reference to regulations issued pursuant to section 32 of the FDI Act. The definition of "undercapitalized" has also been changed in the final rule; "undercapitalized" is determined solely by failing to meet the regulatory minimums. An adequately capitalized institution is in between and if in a "troubled condition," the FDIC will consider its performance and commitment to a corrective program in deciding whether to grant a brokered deposit waiver. The criteria as originally proposed and summarized in the preceding paragraph are likely to be part of any waiver conditions (*i.e.*, compliance with a capital restoration plan accepted in writing by the applicable regulator).

The Board intends to lower or eliminate the leverage capital component from the definitions of "well capitalized," "adequately capitalized," and "undercapitalized," after the risk based capital standards have been revised by each Federal banking agency to take into account interest rate risk as required by section 305 of FDICIA, and after experience has been gained with such standards. We acknowledge the requirements of section 38(c) of the FDI Act and would comply with those requirements, to the extent they apply, before taking any such action.[1]

Interest Rate Limitations

Although an adequately capitalized institution may accept brokered deposits with a waiver from the FDIC, it may not pay a rate of interest on such deposits which, at the time that such deposits are accepted, significantly exceeds (1) the rate paid on deposits of similar maturity in such institution's normal market area for deposits accepted in its normal market area, or (2) the "national rate" paid on deposits of comparable maturity for deposits accepted outside the institution's normal market area.

The FDIC examined several alternatives for purposes of establishing the "national rate." First, the FDIC considered periodically surveying markets throughout the country and compiling and publishing rates for deposits of various maturities. The second alternative examined was reference to publications that currently publish deposit rates. A third possible approach was to tie the national rate to comparable Treasury securities with some additional margin.

The alternative selected for inclusion in the proposed rule was based on Treasury securities. The proposed rule provided that the national rate would be determined by reference to the current yield of similar maturity U.S. Treasury obligations published daily plus 100 basis points, or 150 basis points in the case of any deposit at least half of which is uninsured (wholesale deposits).

The final rule continues to provide that the national rate will be computed by reference to comparable Treasury securities. However, the method of calculating the national rate has been simplified. Ordinarily, the national rate will be 120 percent of the current yield on similar maturity Treasury securities; in the case of institutional (wholesale) deposits, the national rate will be 130 percent of the current yield on similar maturity Treasury securities. The FDIC requests comment from any party that is unreasonably constrained by these limits and will consider whether any

[1] Section 38(c) of the FDI Act requires that the capital standards prescribed under that section by each appropriate Federal banking agency shall include a leverage limit and a risk-based capital requirement, as well as any other additional relevant capital measures needed to carry out the purpose of section 38 and implemented by regulation. However, an appropriate Federal banking agency may, by regulation, rescind any relevant capital measure required by section 38, upon determining (with the concurrence of the other Federal banking agencies) that the measure is no longer an appropriate means for carrying out the purpose of section 38.

future amendment to the regulations is appropriate.

As outlined above, section 29, as amended, prohibits undercapitalized and adequately capitalized institutions from soliciting funds by offering interest rates that "significantly exceed" the prevailing rate or that are "significantly higher" than the prevailing rate. Based upon its reading of the statute and a review of the legislative history, it is the FDIC's view that Congress did not intend to suggest that the phrases "significantly higher" and "significantly exceed" are to have different meanings. Consequently, the FDIC construes the two phrases as having the same meaning. For purposes of implementing the interest rate limitations imposed by FDICIA, the proposed rule defined the phrases "significantly exceeds" or "significantly higher" to mean 50 basis points. In other words, an interest rate would be "significantly" excessive or "significantly" higher than a prevailing market rate if it exceeds that rate by more than 50 basis points. In response to the comment letters received, this number has been changed in the final rule from 50 basis points to 75 basis points.

The proposed rule offered a new definition for the phrase "market area." Previously, FDIC regulations described an institution's "normal market area" as the area in which an institution is advertising and soliciting a particular type of deposit. The normal market area could vary from office to office or for different types of deposits. The media used to advertise and solicit a particular type of deposit and the normal coverage of those media were important considerations in defining the market for that deposit. The earlier FDIC regulation stated that "[i]n each case, the rates offered for the particular deposit must be compared with the rates offered by the other institutions with the same type of charter, without regard to size, in the particular geographic market in which that deposit is being solicited, whether the market is national, regional or local in character." 12 CFR 337.6(a)(1)(ii) footnote.

Under the proposed rule, the term "market area" was more broadly defined to mean "any readily defined geographical area in which rates offered by any one insured depository institution operating in the area may affect the rates offered by other institutions operating in that same area." This definition has been adopted in the final rule. It is designed to facilitate a case-by-case determination of market area based on the economic impact of a particular institution's efforts to solicit deposits in an area.

The proposed rule noted that when comparing rates offered or paid with market rates, there has been some confusion in the past as to what was intended since both the statute and current regulation simply referred to "rates" without elaboration. The FDIC attempted to clarify this requirement by explicitly referring to "nominal" rates of interest in the proposed rule. Staff was of the view that results ordinarily would not change significantly whether nominal rates were compared to nominal rates or yields to yields. Consequently, nominal rates were proposed in the proposed rule for simplicity of administration and enforcement.

Application for a Waiver

The proposed rule provided that adequately capitalized institutions wishing to obtain a waiver must file an application in letter form with the appropriate FDIC regional director. The proposed rule outlined the information required to be submitted in the waiver. It was also provided that any application filed by an institution that is CAMEL- or MACRO-rated 1 or 2 by its primary federal regulator would be deemed approved for the period requested (not to exceed two years) 30 days after the application had been filed with the FDIC unless the institution is notified in writing during the 30 day period that the FDIC requires additional time to review the application. These proposals have been adopted in the final rule, largely without change, except that the 30-day waiting period has been reduced to 21 days.

Deposit Brokers

The proposed rule required the registration of deposit brokers because the statute requires registration in order to permit deposit brokers to continue to operate. Only minimal registration information was required under the proposed rule.

Recordkeeping requirements were also imposed requiring any deposit broker to report, upon request, the volume, rates and maturities of deposits placed with any named institution over a specified time period and the deposits outstanding at a given institution on a stated date. The FDIC believed that these records are already being maintained by brokers in the ordinary course of business. FDICIA authorizes the FDIC to require deposit brokers to submit quarterly reports to the FDIC showing the total amount and maturities of the deposits placed by such broker for each depository institution. The proposed rule did not impose a blanket requirement that such reports be submitted to the FDIC on an ongoing basis. Instead, the proposed rule stated that a deposit broker must submit the above-referenced quarterly reports to the FDIC upon request. The FDIC believed that call report data on brokered deposits received from insured institutions is sufficient for supervisory and regulatory purposes for the time being, but will require deposit brokers to submit reports whenever appropriate. The provisions outlined in the proposed rule have been adopted in the final rule without change.

III. Comment Summary

The proposed rule provided for a 30-day comment period. Comments were required to be received by the FDIC by May 4, 1992.

The FDIC received 90 comment letters addressing various aspects of the proposed rule. Three-quarters of these letters were received after the expiration of the 30-day comment period. The FDIC recognizes that this final rule will have a broad impact, however. Consequently, even though the FDIC is faced with a restricted amount of time within which it must implement this final rule, the FDIC has reviewed and considered all letters received, including those that were received after the deadline. Letters were received from approximately 46 banks or bank holding companies; nine savings associations or savings association holding companies; 10 brokers; and 14 trade associations. As to the trade associations, seven represented banking interests; two represented savings associations; two represented brokers; one represented a credit union; and two represented the interests of both banks and savings associations. The remaining letters were received from a variety of sources, including a financial services firm, individuals, law firms writing on behalf of both banks and savings associations, a rate-listing service, and state banking departments.

Many comment letters received from community banks urged that brokered deposits be prohibited altogether. One complained, for example, that brokered deposits "take [funds] out of communities that in many cases needed the funds." A major trade association representing community bankers wrote to express general support for restrictions on brokered deposits commenting that: "Troubled institutions should not be allowed to pay excessive rates, unfairly competing for deposits, in an attempt to grow out of their problems. Undercapitalized institutions

need stable, 'core' deposits—not short-term brokered deposits attracted by high rates." Another trade group referred to the "savings and loan debacle" and wrote: "[W]e commend the [FDIC's] proposed rule * * *. A prudent measure such as that which is proposed, should aid in curtailing a similar situation from occurring in the future." A state banking department wrote that "much of the S&L crisis can be traced to brokered deposits." In contrast, comment letters received from securities firms and from some large banks argued that brokered deposits should not be further restricted. One argued that: "Brokered deposits are inherently no different than deposits obtained directly by a bank or savings association. Recent studies concluded that brokered deposits have not played a major role in the failure of banks and savings associations and that there is no evidence of abuse of brokered deposits since the adoption of FIRREA [the Financial Institutions Reform, Recovery, and Enforcement Act of 1989]." Another contended that brokered deposits can be "a source of funds that are frequently less expensive and have longer maturities than funds from alternative sources, which permits greater flexibility in liquidity and asset/liability management."

Apart from this larger debate over the merits of brokered deposits, most of the comment letters recognized that the restrictions set out in the proposed rule were required by statute. The comment letters are discussed in more detail below.

Capital Level Definitions

The FDIC received more comment letters on the definition of "well capitalized" than on any other issue. Many comment letters urged that an institution should be considered "well capitalized" if it maintains a capital level that is 100 basis points above the current regulatory minimums. (As opposed to the alternate suggestion of 200 basis points above minimum.) Generally, these comment letters did not provide extensive arguments or data to support their views but simply urged that institutions should not be unnecessarily excluded from the brokered deposit market. Their views were generally premised on the belief that brokered deposits could be beneficial. For example, one comment letter noted: "[B]y precluding those institutions whose capital levels do not exceed required minimum[s] by two percentage points, the Proposed Regulations act to foreclose this otherwise economical and efficient funding source for a number of healthy institutions." Other comment letters argued that the capital levels should be kept low so as not to burden either the institution, which would have to file a waiver application, or the FDIC, which would have to review the application. For example, one comment letter stated:

> Setting extremely high capital requirements for institutions that may accept brokered deposits without a waiver increases the burden on both the depository institutions that could benefit from them and the FDIC which will have to administer the waiver process. Therefore, the definition of 'well capitalized' should be inclusive rather than exclusive.

The concern was also expressed that the definition of "well capitalized" may have implications beyond those currently contemplated in the law. The following comment is typical of these concerns: "Setting the threshold levels has implications for more than just restricting brokered deposits. It * * * may also ultimately affect the ability of banks to offer diversified financial services."

The FDIC does not believe that the capital levels should be set artificially low in order to enable more institutions to escape the restrictions imposed by section 29, as amended. It should be remembered that section 29, as amended, permits adequately capitalized institutions to accept brokered deposits pursuant to a waiver from the FDIC. Section 29, as amended, is not so much a bar on the acceptance for third-party deposits as it is a mechanism that requires an adequately capitalized institution to explain to the FDIC (through the waiver application process) why the institution's use of brokered deposits does not pose an undue risk. If the acceptance of such funds does not constitute an unsafe or unsound practice with respect to the applying institution, then the institution will generally be granted a waiver by the FDIC.

The FDIC also is not persuaded that capital levels should be set low in order to relieve institutions of the burden of filing waiver applications. It is expected that institutions would engage in the type of analysis required by the waiver application whenever they consider the acceptance of brokered deposits. Finally, it would be futile to speculate as to whether or not laws affecting the activities of depository institutions will be enacted in the near future. No one can predict with any certainty the content of such laws, if enacted. It would be inappropriate to allow such speculation to shape the implementation of a statute that already is in effect.

The FDIC believes the different capital levels for purposes of this regulation should be defined based on market perceptions of capital strength and other indicators of soundness. Where institutions fall is essentially a function of their own capital strength and soundness and the statutory scheme crafted for brokered deposits under FDICIA.

Several comment letters opposed using CAMEL or MACRO ratings for purposes of determining whether or not an institution is "well capitalized." They argued that the CAMEL/MACRO ratings should not be incorporated into the definition of "well capitalized" for the following reasons: (1) The CAMEL/MACRO ratings should be kept confidential; (2) the CAMEL/MACRO ratings are subjective; (3) it makes the determination of capital more complicated; and (4) Congress considered, and rejected, proposals to use CAMEL/MACRO ratings in FDICIA because Congress was concerned that the ratings should be kept confidential. In contrast, some institutions wrote to support the use of CAMEL/MACRO ratings for purposes of defining "well capitalized." A major trade association wrote: "The CAMEL sytsem has the advantage of blending the ratings of key aspects of banking, weighted equally. For purposes of this rule, basing a bank's qualifications to accept brokered deposits on a CAMEL system where capital is emphasized seems reasonable."

Other comment letters suggested that the proposed rule could be simplified by eliminating certain references to subsets of capital and by eliminating the reference to capital requirements imposed by state regulators.

In light of the comments received, the FDIC has revised the capital provisions set out in the proposed rule as follows. The definition of "well capitalized insured depository institution" in the final regulation has been changed to stated percentages of leverage and risk-based capital. A "well capitalized institutions" is one that: (1) Has a ratio of Tier 1 capital to total book assets of not less that 5.0 percent; (2) has a ratio of total capital to risk-weighted assets of not less than 10.0 percent; (3) has a ratio of Tier 1 capital to risk-weighted assets of not less than 6.0 percent; and (4) is not in a "troubled condition" as that term is used in section 32 of the FDI Act. With regard to the requirement that the ratio of Tier 1 capital to risk-weighted assets be not less than 6.0 percent, we do *not* intend to suggest that, as an institution's total risk-based capital ratio increases, its Tier 1 capital must always increase proportionately so that 60 percent of an institution's total risk-based capital is always Tier 1 capital.

For example, an institution with 11 percent total risk-based capital would not be required to have a 6.6 percent Tier 1 risk-based capital ratio; rather, the minimum ratio of Tier 1 capital to risk-weighted assets would still be 6.0 percent.

These percentages are at the lower end of the range of institutions that might be considered "well capitalized" and yet are consistent with the intent of Congress in establishing capital as a principal protection for taxpayer funds under the regulatory scheme established under FDICIA. The definition of well capitalized has also been simplified by eliminating references to subsets of capital and by eliminating references to state standards. In addition, the reference to CAMEL/MACRO ratings has been deleted from the definition of a "well capitalized" institution. The FDIC has substituted in its place the above-referenced requirement that, in order to be considered well capitalized, institutions may not be in a "troubled condition" as that term is used in section 32 of the FDI Act. This substitution should reduce concerns as to the subjectivity and confidentiality of CAMEL/MACRO ratings.

The comment letters did not challenge the definition of "adequately capitalized" used in the proposed rule. Consequently, that definition set forth in the proposed rule is adopted in the final rule without change. The definition of undercapitalized has been greatly simplified. It now refers to institutions that fail to meet the minimum capital requirements prescribed by their primary Federal regulator, exclusive of any corrective orders. It is believed that these interim definitions are fairly simple, reasonable under the circumstances and should suffice until definitions of capital levels for purpose of section 38 are adopted. These interim definitions of capital levels should not be construed as anticipatory or necessarily indicative of how the different capital levels may eventually be defined for purposes of prompt corrective action under section 38 of the FDI Act.

Interest Rate Restrictions

Determination of the "National Rate"

A majority of the comment letters that addressed the issue agreed that the "national rate" should be determined by reference to the yields on comparable Treasury securities with some additional margin. A small number of comment letters questioned whether such an index would be sufficiently flexible. These comment letters argued that the spread between Treasury securities and bank deposits is not constant and that the funding operations of a bank may be constrained as economic conditions change. They also argued that Treasury securities may not have the necessary range of maturities and denominations to permit adequate differentiation in pricing different products. Most of these comment letters recommended that the FDIC rely on a private publication. Comment letters that opposed reliance on a private publication or on a FDIC-generated survey were concerned that the institutions surveyed may not be sufficiently representative of all institutions.

Those who endorsed implementation of a Treasury securities index to calculate the national rate did so on the grounds that such an approach is "more objective and simpler to administer" than the other methods outlined in the proposed rule. One comment letter noted:

> The Treasury markets are well recognized and otherwise meet the criteria established. We believe that it would be a relatively simple matter to ensure that obligations are within 100 basis points of U.S. Treasury obligations with similar maturities and 150 basis points if at least half the deposit is uninsured. * * * [A]s a functional index, it appears to be the one most susceptible of broad use.

Another comment letter argued that a U.S. Treasury index is a logical choice for a national brokered deposit rate as it also is the generally accepted benchmark for pricing fixed rate or, at times, floating rate financings. In response to arguments that Treasury securities may not have the necessary range of maturities and denominations, comment letters supportive of the Treasury securities index contended that "it is both common and effective practice to interpolate rates on deposits where there are no corresponding maturities."

However, even those who endorsed the Treasury securities index cautioned that apread between Treasury securities and depository institution deposits can fluctuate substantially over time. One comment letter stated: "Traditionally, deposit spreads to U.S. Treasuries have widened whenever there is a flight to quality and investors move to U.S. Treasury securities. It is important that this index have the ability to be moved so as to adjust for changes in market spreads." These comment letters urged that the spread should be wide enough to handle such fluctuations. Generally, they found the spread contained in the proposed rule (*i.e.*, 100 basis points, or 150 basis points in the case of any deposit at least half of which is uninsured) to be adequate, but others urged that the FDIC adopt a greater spread. Several comment letters urged the FDIC to adopt an index that the securities industry is developing for various retail brokered deposits. However, the FDIC understands that the index is not in place at this time.

A substantial number of comment letters expressed concern about institutional or wholesale deposits. The institutional market is described as being comprised of institutional investors purchasing substantially uninsured, large-denomination, negotiable certificates of deposit from banks and savings associations with ratings from the credit rating agencies. In contrast, the retail market is described as being comprised primarily of individual depositors and savers purchasing fully insured certificates of deposit in relatively smaller amounts. Many of these comment letters argued that the institutional market should be exempted from the brokered deposit restrictions contained in the statute and in the regulation. Most comment letters, however, seemed to recognize that the FDIC does not have the authority to exempt the institutional market from the statutory prohibitions governing brokered deposits. Instead, they supported the two-tier approach taken in the proposed rule, that is, a spread that is greater for deposits over half of which are uninsured.

Based upon the comments received, the final rule adopts the Treasury index outlined in the proposed rule, with one change. Although not ideal, this approach has been adopted since it is better than any other and has a number of advantages. First, it is objective and simple to administer. Maximum allowable rates can be computed by anyone who has the benchmark rates and the formula for deriving the maximum. Moreover, since the benchmark rates are updated regularly and the formula remains constant, there is no maintenance requirement. The final rule has been changed, however, to allow for greater flexibility should the spread to Treasury securities widen in a rising interest rate environment. Recognizing that today's relatively low rates are not necessarily indicative of future rates, the final rule provides that the national rate will be calculated by reference to a percentage, rather than a fixed number of basis points, as had been provided in the proposed rule. More specifically, the national rate shall be 120 percent of the current yield on similar maturity U.S. Treasury obligations, or, in the case of any wholesale deposit, 130 percent of such

applicable yield. A wholesale deposit is a deposit at least half of which is uninsured. In the case of non-term deposits or other unusual situations, the FDIC will provide interpretative advice regarding the appropriate benchmark reference rates as necessary.

The FDIC has rejected the alternative that would have required it to survey markets throughout the country and compile and publish rates for deposits of various maturities. The FDIC believes this approach would not be timely because data on market rates must be available on a substantially current basis to achieve the intended purpose of this provision and permit institutions to avoid violations. At this time, the FDIC has determined not to tie the national rate to a private publication. The FDIC has not been able to establish that such published rates sufficiently cover the markets for deposits of different sizes and maturities.

Definition of Significantly Higher

Several comment letters suggested that the definition of "significantly higher" be revised. These comment letters suggested anywhere from 75 to 200 basis points as the appropriate test. Some comment letters asserted that adequately capitalized institutions, as opposed to undercapitalized institutions, should be given greater flexibility in terms of the interest rates they may offer. In particular, concern was expressed that adequately capitalized institutions cannot pay significantly higher than market rates on deposits they solicit directly, even with a waiver from FDIC. In light of these concerns, the meaning of "significantly exceeds" and "significantly higher" has been revised in the final rule. An interest rate is deemed to be significantly higher or excessive if it exceeds the applicable benchmark (*i.e.*, the national rate or the local rate) by more than 75 basis points. Based upon the FDIC's experience with the brokered deposit prohibitions to date, it is believed that this number will allow insured depository institutions subject to the interest rate ceilings imposed by FDICIA to compete for funds within markets, and yet constrain their ability to attract funds by paying rates significantly higher than prevailing rates.

Definition of "Normal Market Area"

A small number of letters comment on the definition of the phrase "normal market area" and "market area." Some comment letters found the definition of "market area" offered in the proposed rule to be acceptable. A few comment letters asked that the phrase be more precisely defined, while other comment letters urged that the term be defined broadly. One comment letter stated:

> We recognize that it is probably impossible to come up with a precise definition of normal market area that will be appropriate for all institutions. Thus, we suggest that the final regulation allow each institution to establish its own market area (or several market areas, if appropriate), but that it provide additional guidance to aid banks in making such determination.

Among the factors suggested in this comment letter were advertising, the percentage of deposits that come from the community, and the bank's market share in the community.

In light of these concerns, the final rule incorporates the generalized test of economic impact outlined in the proposed rule for purposes of defining "market area." Under the final rule, the market area will be determined pragmatically, on a case-by-case basis, based on the evident or likely impact of a depository institution's solicitation of deposits in a particular area, taking into account the means and media used and volume and sources of deposits resulting from such solicitation.

Definition of "Prevailing Rate"

Very few letters commented on the definition of "prevailing rate." Some of these letters offered alternative definitions while others asked for clarification. Based upon its analysis of the comment letters, and its experience with the brokered deposit regulations to date, the FDIC has determined not to define more specifically the term "prevailing rate" through the regulation at this time. Rather, a case-by-case analysis is believed to be more appropriate. The FDIC has, however, clarified matters by defining "prevailing rate" as the average yields paid on comparable deposits in the relevant market at the time. Some comment letters objected to the use of "nominal rates," arguing that nominal rates are easy to distort through compounding differences and discounts of premiums on an instrument. As a result of these comments, the final rule explicitly refers to effective yields. The FDIC believes that effective yields are the more accurate and meaningful measure since yield will account for differences in compounding and permit more ready comparison with U.S. Treasury securities, including instruments sold at a discount.

Waiver Applications

A number of comment letters asked that the information required for the waiver application be simplified. It was argued that not all of the information outlined in the proposed rule was relevant. The Board did not find these arguments to be persuasive. A waiver application may be granted only if the FDIC finds that acceptance of brokered deposits is not an "unsound or unsafe practice." Given the broad nature of this test, the FDIC must consider a range of information before it may conclude that the test has been satisfied. The FDIC remains convinced that the information outlined in the proposed rule is necessary in order to enable the FDIC to make a full analysis of the waiver application.

Any waiver granted will be for a fixed period, generally no longer than two years. The FDIC anticipates that a full, two-year term waiver will be used sparingly. More frequent reevaluations are usually called for. The final rule allows for a short transitional period after the effective date of the final rule. An adequately capitalized institution that files an application with the FDIC within 30 days of the effective date of the final rule may accept, renew or rollover brokered deposits for a period of 60 days following the effective date of the final rule. The institution must cease such activity if it is so notified by the FDIC. Short term, temporary orders may also be issued by the FDIC, based upon a preliminary review of a waiver application and pending further, in-depth analysis and consideration.

Registration of Brokers

The comment letters were generally supportive of the broker notification and recordkeeping requirements outlined in the proposed rule. Consequently, this final rule implements the requirements outlined in the proposed rule without change. It is the FDIC's view that a company may file a single notice on behalf of all of its employees and/or agents, although the FDIC reserves the right to require individual information at any time.

Conservatorships

Section 29 of the FDI Act grants insured depository institutions for which the FDIC has been appointed as conservator a limited exception from the brokered deposit prohibitions set forth in the statute. The final rule reflects this exception. The final rule provides that institutions for which the FDIC has been appointed conservator shall not be subject to the brokered deposit prohibitions for 90 days after the date on which the institution was placed in conservatorship. In large part, this provision continues the exception contained in current FDIC regulations. It will require the Board to make certain findings as it did in the past. It is

believed this standby authority could provide some useful funding flexibility whenever the FDIC is appointed conservator of an institution. In any event, and consistent with section 29 of the FDI Act, this additional funding flexibility could be used only for the first 90 days of a conservatorship after which the institution can no longer accept, renew or rollover brokered deposits. In addition, such institutions are subject to the interest rate restrictions imposed by FDICIA. Section 29 of the FDI Act does not set forth a similar specific exemption from the brokered deposit prohibition for RTC conservatorships. The FDIC did not receive any specific comments on this provision.

Other Issues

Government Programs Designed to Assist Minority and Women-Owned Depository Institutions

Some comment letters raised concerns about certain government programs. These government programs, which were created to assist minority and women-owned depository institutions ("MWODIs"), benefit from the services of insured institutions which facilitate the deposit of government-owned or government-controlled funds in MWODIs and carry out other administrative duties necessary to the operation of the programs. Minority and women-owned financial institution assistance programs provide stable, long-term deposits for which the insured MWODIs generally pay market or less than market rates. The purposes for which the funds are to be used are monitored by the sponsoring departments or agencies. Such deposits clearly do not have the negative attributes of the brokered deposits which were of concern to Congress in adopting the FDICIA, and the FDIC believes that the amendments made by section 301 of that Act were not intended to apply to deposits placed by insured depository institutions assisting government departments and agencies in the administration of minority and women-owned depository institution deposit programs. The final rule excludes from the definition of the term "deposit broker" insured depository institutions acting as intermediaries or agents for government departments or agencies to facilitate the deposit of funds in MWODIs under minority or women-owned depository institution deposit programs.

Insured Branches of Foreign Banks Operating in the U.S.

As stated in the proposed rule, insured branches of foreign banks operating in the United States are subject to the prohibitions contained in section 29 of the FDI Act, as amended. (57 FR 11442, 11444, April 3, 1992.) It is not clear from the statute, however, what criteria should be used for purposes of distinguishing among a "well capitalized" branch, an "adequately capitalized" branch, or an "undercapitalized" branch. Reference could be made to the capital position of the entire foreign bank, not just the insured branch operating in the U.S., but such a reference would be cumbersome and make implementation of the brokered deposit prohibitions diffficult. Consequently, the proposed rule offered a definition of "undercapitalized" based on the pledge of assets required by 12 CFR 346.19 and on the eligible assets required by 12 CFR 346.20. More specifically, the proposed rule provided that, for purposes of the brokered deposit prohibitions only, an insured branch of a foreign bank operating in the United States would be considered "undercapitalized" if it failed to maintain either: (1) The pledge of assets required under 12 CFR 346.19; or (2) the required volume of eligible assets prescribed by 12 CFR 346.20. The proposed rule did not specify when an insured branch of a foreign bank would be considered "well capitalized." One comment letter noted that, in the absence of such a definition, all insured branches of foreign banks that are not "undercapitalized" would be required to apply for a waiver, an obviously undesirable result. Consequently, the final rule sets out a definition of "well capitalized" applicable to insured branches of foreign banks. The final rule provides that an insured branch of a foreign bank is well capitalized, for purposes of the brokered deposit prohibitions, if it (1) maintains the pledge of assets required under 12 CFR 346.19; (2) maintains the eligible assets prescribed by 12 CFR 346.20(a) at 108 percent of the preceding quarter's average book value of the insured branch's third-party liabilities; and (3) has not been notified by the appropriate Federal banking agency that it is in a "troubled condition." The reference to "troubled condition" parallels the criteria used in the definition of "well capitalized" applicable to all other insured depository institutions. The final rule provides that an "adequately capitalized" institution is one that is neither a well capitalized institution nor an undercapitalized institution. The FDIC believes that this general definition is sufficient to encompass insured branches of foreign banks.

Miscellaneous Issues

Some of the comment letters asked for clarifications and interpretations of the statute which did not require amendment of the regulation. The FDIC intends to issue additional guidance to address these questions as necessary. The FDIC also will consider whether additional rulemaking is required to address any of these issues.

IV. Summary of Key Provisions of Final Rule

Key Definitions

A well capitalized institution is one that: (1) Has a ratio of total capital to risk-weighted assets of not less than 10.0 percent; (2) has a ratio of Tier 1 capital to risk-weighted assets of not less than 6.0 percent; (3) has a ratio of Tier 1 capital to total book assets of not less than 5.0 percent; and (4) has not been notified by its appropriate Federal banking agency that it is in a "troubled condition." An undercapitalized institution is one that fails to meet the minimum regulatory capital requirements prescribed by its appropriate Federal banking agency. An adequately capitalized institution is one that is neither a well capitalized institution nor an undercapitalized institution.

General Prohibitions

The statute regulates the acceptance by insured depository institutions of funds obtained, directly or indirectly, by or through any deposit broker for deposit into one or more deposit accounts (*i.e.*, "brokered deposits"). Well capitalized insured depository institutions may accept brokered deposits without restriction. Adequately capitalized insured depository institutions are prohibited from accepting brokered deposits unless they first obtain a waiver from the FDIC. Undercapitalized institutions are prohibited from accepting brokered deposits.

Adequately capitalized institutions desiring to obtain a waiver from the FDIC must file an application in letter form with the appropriate FDIC regional director. The final rule provides for a 60-day transitional period. An adequately capitalized institution that files an application with the FDIC within 30 days of the effective date of the final rule may accept, renew or rollover brokered deposits for a period of 60 days following the effective date of the final rule, unless otherwise notified by the FDIC.

Interest Rate Restrictions

Undercapitalized institutions may not solicit deposits by offering rates of interest that are significantly higher than the prevailing rates of interest on insured deposits (1) in such institution's normal market areas; or (2) in the market area in which such deposits would otherwise be accepted.

Adequately capitalized institutions that accept brokered deposits pursuant to a waiver from the FDIC are prohibited from paying a rate of interest on such funds which, at the time that such funds are accepted, significantly exceeds (1) the rate paid on deposits of similar maturity in such institution's normal market area for deposits accepted in the institution's normal market area; or (2) the "national rate" paid on deposits of comparable maturity for deposits accepted outside the institution's normal market area. The "national rate" is (1) 120 percent of the current yield on similar maturity U.S. Treasury obligations, or (2) in the case of any deposit at least half of which is uninsured (institutional or wholesale deposits), 130 percent of such applicable yield.

A rate is deemed to be "significantly" higher or excessive if it exceeds by more than 75 basis points the applicable benchmark (*i.e.*, the local rate or national rate).

Under the statute, the term "deposit broker" includes any insured depository institution, and any employee of any insured depository institution, which solicits deposits by offering rates of interest which are significantly higher than the prevailing rates of interest offered by other insured depository institutions having the same type of charter in the offering depository institution's normal market area. The apparent effect of this provision is to limit the rate of interest an adequately capitalized institution may offer on this type of deposit, as well as those obtained through a third-party intermediary. A merely adequately capitalized institution cannot solicit deposits by offering rates of interest which are significantly more than the relevant local or national rate.

Deposit Brokers—Recordkeeping Requirements

A deposit broker must register with the FDIC before it may solicit or place deposits with an insured depository institution. A deposit broker must maintain records showing the volume of brokered deposits placed with any insured depository institution over the preceding 12 months. Such records must also show the maturities, rates, and costs associated with such deposits. Upon request from the FDIC, a deposit broker must file quarterly written reports showing the volume, maturities, rates, and costs of brokered deposits placed with each depository institution during the applicable quarter.

V. Reason for Adoption Without 30-Day Delayed Effective Date

Section 301(d) of FDICIA provides that final regulations to carry out the amendments made under section 301 shall become effective not later than 180 days after the date of enactment of FDICIA. In order to comply with the requirements of section 301(d) of FDICIA, this final rule must become effective not later than June 16, 1992. Due to the statutory time constraints, the FDIC finds that good cause exists for waiving the 30-day delayed effective date required by the Administrative Procedure Act (5 U.S.C. 553(d)).

VI. Paperwork Reduction Act

The collection of information contained in § 337.6 as revised by this final rule will be reviewed by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 3064–0099. The information will be collected from adequately capitalized insured depository institutions applying for a waiver from the prohibition on the acceptance or renewal of brokered deposits contained in section 29 of the Federal Deposit Insurance Act as amended (12 U.S.C. 1831f). Information will also be collected from deposit brokers registering with the FDIC in order to continue to operate as a deposit broker.

The estimated annual reporting burden for the collection of information from insured depository institutions and deposit brokers in this final rule is summarized as follows:

Number of Respondents:	
Depository Institutions	400
Deposit Brokers	50
Total	450
Number of Responses per Respondent	1
Total Annual Responses	450
Hours Per Response:	
Depository Institutions	6
Deposit Brokers	1
Total Annual Burden Hours	2,450

No burden is estimated for the recordkeeping requirements for deposit brokers since no new or additional records are being mandated beyond those believed maintained in the regular course of business at the present time. Although periodic reporting is authorized by statute, none is being required under the final rule.

Comments concerning the accurancy of this burden estimate and suggestions on reducing this burden shall be directed to Assistant Executive Secretary (Administration), room F–453, Federal Deposit Insurance Corporation, Washington, DC 20429, and to the Office of Management and Budget, Paperwork Reduction Project (3064–0099), Washington, DC 20503.

VII. Regulatory Flexibility Act

The FDIC's Board of Directors hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities because it largely tracks and clarifies strictures established by statute and affords a means by which adequately capitalized insured depository institutions may avoid the application of those strictures by applying to the FDIC for a waiver. Moreover, it is anticipated that the institutions most affected by the regulation will be relatively large insured depository institutions and large brokerage firms acting as deposit brokers. Consequently, the provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603 and 604) are not applicable.

List of Subjects in 12 CFR Part 337

Banks, Banking, Reporting and recordkeeping requirements, Savings associations, Securities.

For the reasons set forth in the preamble, the FDIC hereby amends part 337 of title 12 of the Code of Federal Regulations as set forth below.

PART 337—UNSAFE AND UNSOUND BANKING PRACTICES

1. The authority citation for part 337 is revised to read as follows:

Authority: 12 U.S.C. 1816, 1818(a), 1818(b), 1819, 1828(f), 1831f, 1831f–1.

2. Section 337.6 is revised to read as follows:

§ 337.6 Brokered deposits.

(a) *Definitions.* For the purposes of this § 337.6, the following definitions apply:

(1) *Adequately capitalized insured depository institution* means an insured depository institution that is neither a well capitalized insured depository institution nor an undercapitalized insured depository institution.

(2) *Appropriate Federal banking agency* has the same meaning as

provided under section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

(3) *Brokered deposit* means any deposit that is obtained, directly or indirectly, from or through the mediation or assistance of a deposit broker.

(4) *Deposit* has the same meaning as provided under section 3(l) of the Federal Deposit Insurance Act (12 U.S.C. 1813(1)).

(5) *Deposit broker.* (i) The term *deposit broker* means:

(A) Any person engaged in the business of placing deposits, or facilitating the placement of deposits, of third parties with insured depository institutions, or the business of placing deposits with insured depository institutions for the purpose of selling interests in those deposits to third parties; and

(B) An agent or trustee who establishes a deposit account to facilitate a business arrangement with an insured depository institution to use the proceeds of the account to fund a prearranged loan.

(ii) The term *deposit broker* does not include:

(A) An insured depository institution, with respect to funds placed with that depository institution;

(B) An employee of an insured depository institution, with respect to funds placed with the employing depository institution;

(C) A trust department of an insured depository institution, if the trust or other fiduciary relationship in question has not been established for the primary purpose of placing funds with insured depository institutions;

(D) The trustee of a pension or other employee benefit plan, with respect to funds of the plan;

(E) A person acting as a plan administrator or an investment adviser in connection with a pension plan or other employee benefit plan provided that person is performing managerial functions with respect to the plan;

(F) The trustee of a testamentary account;

(G) The trustee of an irrevocable trust (other than one described in paragraph (a)(5)(i)(B) of this section), as long as the trust in question has not been established for the primary purpose of placing funds with insured depository institutions;

(H) A trustee or custodian of a pension or profit-sharing plan qualified under section 401(d) or 403(a) of the Internal Revenue Code of 1986 (26 U.S.C. 401(d) or 403(a));

(I) An agent or nominee whose primary purpose is not the placement of funds with depository institutions; or

(J) An insured depository institution acting as an intermediary or agent of a U.S. government department or agency for a government sponsored minority or women-owned depository institution deposit program.

(iii) Notwithstanding paragraph (a)(5)(ii) of this section, the term *deposit broker* includes any insured depository institution, and any employee of any insured depository institution, which engages, directly or indirectly, in the solicitation of deposits by offering rates of interest (with respect to such deposits) which are significantly higher than the prevailing rates of interest on deposits offered by other insured depository institutions having the same type of charter in such depository institution's normal market area.

(6) *Employee* means any employee: (i) Who is employed exclusively by the insured depository institution;

(ii) Whose compensation is primarily in the form of a salary;

(iii) Who does not share such employee's compensation with a deposit broker; and

(iv) Whose office space or place of business is used exclusively for the benefit of the insured depository institution which employs such individual.

(7) *FDIC* means the Federal Deposit Insurance Corporation.

(8) *Insured depository institution* means any bank, savings association, or branch of a foreign bank insured under the provisions of the Federal Deposit Insurance Act (12 U.S.C. 1811 et. seq.).

(9) *Undercapitalized insured depository institution* means:

(i) Any insured depository institution that fails to meet the minimum regulatory capital requirements prescribed by its appropriate Federal banking agency; [11] and

(ii) Any insured branch of a foreign bank that fails to maintain either:

(A) The pledge of assets required under 12 CFR 346.19; or

(B) The required volume of eligible assets prescribed by 12 CFR 346.20.

(10) *Well capitalized insured depository institution.* (i) The term *well capitalized insured depository institution* means an insured depository institution that:

(A) Has a ratio of total capital to risk-weighted assets of not less than 10.0 percent;

(B) Has a ratio of Tier 1 capital to risk-weighted assets of not less than 6.0 percent;

(C) Has a ratio of Tier 1 capital to total book assets of not less than 5.0 percent; and

(D) Has not been notified by its appropriate Federal banking agency that it is in a "troubled condition" as that term is defined by the appropriate Federal banking agency in its regulations implementing section 32 of the Federal Deposit Insurance Act.

(ii) The terms *Tier 1 capital, risk-weighted assets, total capital,* and *total book assets* have the respective meanings prescribed in regulations issued by the appropriate Federal banking agency.

(iii) As to insured nonmember banks, the term *troubled condition* is defined in 12 CFR 303.14(a)(4) to mean an institution that:

(A) Has been assigned a composite CAMEL rating by the FDIC of 4 or 5 under the Uniform Financial Institutions Rating System, or, in the case of an insured state-licensed branch of a foreign bank ("state branch"), an equivalent rating;

(B) Is subject to a proceeding initiated by the FDIC for termination or suspension of deposit insurance;

(C) Is subject to a written agreement which requires action to improve or maintain the safety and soundness of the institution and which is issued by either the FDIC or by the appropriate state banking authority, a cease and desist order or proceeding initiated by either the FDIC or the appropriate state banking authority, or a capital directive issued by either the FDIC or the appropriate state banking authority; or

(D) Is informed in writing by the regional director (Division of Supervision) of the region in which the institution is located ("appropriate regional director") or his or her designee, based on a visitation, examination, or report of condition, that it has been designated a "troubled institution" for the purposes of 12 CFR 303.14.

(iv) For purposes of this § 337.6, an insured branch of a foreign bank is *well capitalized* if it:

(A) Maintains the pledge of assets required under 12 CFR 346.19;

(B) Maintains the eligible assets prescribed by 12 CFR 346.20(a) at 108 percent of the preceding quarter's average book value of the insured branch's liabilities, exclusive of liabilities due to the foreign bank's head office, other branches, agencies, offices, or wholly owned subsidiaries; and

[11] An institution that meets the minimum capital standards prescribed in regulations issued by its appropriate Federal banking agency but that is required to achieve a higher level of capital (*e.g.*, to margin additional risk inherent in its activities or assets, etc.), is not considered to be "undercapitalized" for the purposes of this section.

(C) Has not been notified by its appropriate Federal banking agency that it is in a *troubled condition* as that term is defined by the appropriate Federal banking agency in its regulations implementing section 32 of the Federal Deposit Insurance Act.

(b) *Solicitation and acceptance of brokered deposits by insured depository institutions.* (1) A well capitalized insured depository institution may solicit and accept, renew or roll over any brokered deposit without restriction by this section.

(2)(i) An adequately capitalized insured depository institution may not accept, renew or roll over any brokered deposit unless it has applied for and been granted a waiver of this prohibition by the FDIC in accordance with the provisions of this section.

(ii) Any adequately capitalized insured depository institution that has been granted a waiver to accept, renew or roll over a brokered deposit may not pay an effective yield on any such deposit which, at the time that such deposit is accepted, renewed or rolled over, exceeds by more than 75 basis points:

(A) The effective yield paid on deposits of comparable size and maturity in such institution's normal market area for deposits accepted from within its normal market area; or

(B) The national rate paid on deposits of comparable size and maturity for deposits accepted outside the institution's normal market area. For purposes of this paragraph (b)(2)(ii)(B), the national rate shall be:

(1) 120 percent of the current yield on similar maturity U.S. Treasury obligations; or

(2) In the case of any deposit at least half of which is uninsured, 130 percent of such applicable yield.

(3)(i) An undercapitalized insured depository institution may not accept, renew or roll over any brokered deposit.

(ii) An undercapitalized insured depository institution may not solicit deposits by offering an effective yield that exceeds by more than 75 basis points the prevailing effective yields on insured deposits of comparable maturity in such institution's normal market area or in the market area in which such deposits are being solicited.

(4) For purposes of the restriction contained in paragraphs (b)(2)(ii)(A) and (b)(3)(ii) of this section, the effective yields in the relevant markets are the average of effective yields offered by other insured depository institutions in the market area in which deposits are being solicited. An effective yield on a deposit with an odd maturity violates paragraphs (b)(2)(ii)(A) and (b)(3)(ii) of this section if it is more than 75 basis points higher than the yield calculated by interpolating between the yields offered by other insured depository institutions on deposits of the next longer and shorter maturities offered in the market. A market area is any readily defined geographical area in which the rates offered by any one insured depository institution soliciting deposits in that area may affect the rates offered by other insured depository institutions operating in the same area.

(c) *Waiver.* The FDIC may, on a case-by-case basis and upon application by an adequately capitalized insured depository institution, waive the prohibition on the acceptance, renewal or rollover of brokered deposits upon a finding that such acceptance, renewal or rollover does not constitute an unsafe or unsound practice with respect to such institution. The FDIC may conclude that it is not unsafe or unsound and may grant a waiver when the acceptance, renewal or rollover of brokered deposits is determined to pose no undue risk to the institution. Any waiver granted may be revoked at any time by written notice to the institution.

(d) *Application.* An adequately capitalized insured depository institution wishing to accept, renew or roll over brokered deposits may apply to the appropriate regional director for supervision for the region in which the main office of the institution is located. The application may be in letter form and shall include the following information:

(1) The time period for which a waiver may be needed;

(2) A statement of the policy governing the use of brokered deposits in the institution's overall funding and liquidity management program;

(3) The volume, rates and maturities associated with the brokered deposits held currently and anticipated during the waiver period sought, including any internal limits placed on the terms, solicitation and use of brokered deposits;

(4) A description of how brokered deposits are costed and compared to other funding alternatives and how such deposits are used in the institution's lending and investment activities, including a detailed discussion of any plans for asset growth;

(5) A description of the procedures and practices used to solicit brokered deposits, including an identification of the principal sources of such deposits;

(6) A description of the management systems in overseeing the solicitation, acceptance and use of brokered deposits;

(7) A recent consolidated financial statement with balance sheet and income statements; and

(8) Reasons the institution believes its acceptance, renewal or rollover of brokered deposits would pose no undue risk.

(e) *Decision.* (1) The FDIC Executive Director for Supervision and Resolutions, the Director, Division of Supervision, and when confirmed in writing by the Director, an associate director or the appropriate regional director, or deputy regional director, shall each have the authority to approve any waiver application properly filed. An application is properly filed when complete and accurate information addressing each of the informational elements stated in paragraph (d) of this section has been provided to the appropriate regional director. Any properly authorized FDIC official may grant a temporary waiver based upon a preliminary review for a short period in order to facilitate the orderly processing of an application for a waiver. Any waiver granted will be for a fixed period, generally no longer than two years, but may be extended upon reapplication. The FDIC will provide notice to the depository institution's appropriate Federal banking agency and any state regulatory agency, as appropriate, that a request for a waiver has been filed and will consult with such agency or agencies, prior to taking action on the institution's request for a waiver. Notwithstanding the foregoing, prior notice and/or consultation shall not be required in any particular case if the FDIC determines that the circumstances require it to take action without giving such notice and opportunity for consultation.

(2) Any application filed by an institution that is CAMEL- or MACRO-rated 1 or 2 by its appropriate Federal banking agency shall be deemed approved for the period requested (not to exceed 2 years) 21 days after filing unless the institution in the interim has been notified in writing that further review and consideration are required and that it will be specifically notified when its application has been decided.

(f) *60-Day transition period.* An adequately capitalized insured depository institution may accept, renew or roll over any brokered deposit for a period of 60 days following June 16, 1992, provided it has properly filed an application within 30 days after June 16, 1992, and the FDIC has not notified the institution that the application has been denied.

(g) *Exclusion for institutions in FDIC conservatorship.* No insured depository

institution for which the FDIC has been appointed conservator shall be subject to the prohibition on the acceptance, renewal or rollover of brokered deposits contained in this § 337.6 or section 29 of the Federal Deposit Insurance Act for 90 days after the date on which the institution was placed in conservatorship. During this 90-day period, the institution shall, nevertheless, be subject to the restriction on the payment of interest contained in paragraph (b)(2)(ii) of the section. After such 90-day period, the institution may not accept, renew or roll over any brokered deposit.

(h) *Deposit brokers.* (1) A deposit broker shall not solicit or place any deposit with an insured depository institution unless it has provided the FDIC with written notice that it is acting as a deposit broker. The notice may be in letter form and shall describe generally the history, nature and volume of its deposit brokerage operations, including the sources and placement of such funds. The notice should be submitted to the Federal Deposit Insurance Corporation, Office of Compliance and Special Activities, Division of Supervision, Washington, DC 20429. The notice shall be effective upon receipt.

(2) A deposit broker shall maintain sufficient records of the volume of brokered deposits placed with any insured depository institution over the preceding 12 months and the volume outstanding currently, including the maturities, rates and costs associated with such deposits.

(3) The FDIC Executive Director, Supervison and Resolutions, the Director, Division of Supervision, or any of their designees may request, from time to time, quarterly written reports from any deposit broker regarding the volume of brokered deposits placed with a specified insured depository institution and the maturities, rates and costs associated with such deposits.

(4) When a deposit broker ceases to act as such, it shall notify the FDIC in writing at the address indicated in paragraph (h)(1) of this section that it is no longer acting as a deposit broker.

By order of the Board of Directors.

Dated at Washington, DC this 29th day of May, 1992.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 92-13186 Filed 6-4-92; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

[T.D. 92-52]

Clearance Requirements for Certain U.S. Vessels

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document makes a conforming amendment to the Customs Regulations to reflect certain statutory changes that were made relating to the requirements for U.S. vessels seeking clearance for certain voyages.

EFFECTIVE DATE: June 5, 1992.

FOR FURTHER INFORMATION CONTACT: Larry Burton, Carrier Rulings Branch, 202-566-5706.

SUPPLEMENTARY INFORMATION:

Background

Customs is responsible for the clearance of vessels bound for foreign ports. Before clearing vessels, Customs is charged with ensuring that they meet statutory and Coast Guard requirements regarding the employment and disembarkation of seamen.

Section 4.69, Customs Regulations (19 CFR 4.69), now provides that no vessel of the U.S. bound for a foreign port outside the British North American possessions, the West Indies and Mexico shall be granted final clearance until the shipping articles of the vessel executed before a shipping commissioner on Coast Guard Form 705, 705-A, or 705-B are presented to Customs. Section 4.69 also provides that no vessel bound for a foreign port shall be granted clearance until Customs is satisfied that there has been full compliance with the pertinent requirements of 46 U.S.C. 599 and 672 and the Coast Guard regulations issued thereunder relating to allotments of wages, the language test and the crew.

Section 4.69 no longer accurately reflects the statutory scheme set forth in the shipping laws. The statutory references in the current § 4.69 relating to allotments of wages to the crew and language comprehension and rating of the crew, 46 U.S.C. 599 and 672, respectively, are no longer in effect. Public Law 98-89 (97 Stat. 600-604 and 600-605) repealed both 46 U.S.C. 599 and 672. Provisions concerning the language comprehension and rating of the crew are now found in 46 U.S.C. 8702(b). Under that provision, a vessel described in the statute may depart from a U.S. port only if at least 75 percent of the crew in each department on board is able to understand any order spoken by the officers and, with certain limited exceptions, 65 percent of the deck crew are rated at least as able seamen. Section 8702, unlike its predecessor provision, does not provide for denial of clearance by Customs to a violative vessel; it provides for a monetary penalty for violation of the provision. Provisions relating to advances and allotments of seamen wages are now found in 46 U.S.C. 10314 and 10315 relating to shipping agreements, rather than 46 U.S.C. 599; clearance can still be denied if shipping agreements do not comply with these provisions.

In addition to these changes in the statutory scheme, 46 U.S.C. 10302, which was also enacted by Public Law 98-89, now generally requires, through 46 U.S.C. 10301, that shipping articles agreements are necessary for U.S. vessels that are of at least 75 gross tons on a voyage between a port of the U.S. on the Atlantic Ocean and a port of the U.S. on the Pacific Ocean as well as for U.S. vessels on a voyage between a port in the U.S. and a port in a foreign country other than Canada, Mexico or the West Indies.

Section 4.69, Customs Regulations, as presently worded, also does not accurately reflect the Coast Guard Regulations. The Coast Guard Regulations concerning the shipping articles form (46 CFR 14.05-1) specifically states that any shipping articles form other than Form CG-705A that complies with statutory requirements may be utilized.

In order to conform the Customs Regulations to the current statutory scheme and the Coast Guard Regulations, this document amends § 4.69, Customs Regulations (19 CFR 4.69).

Inapplicability of Public Notice and Delayed Effective Date

Inasmuch as these amendments merely conform the Customs Regulations to existing law and practice, pursuant to 5 U.S.C. 553(a)(2) and (b)(3)(B), notice and public procedure are unnecessary, and pursuant to 5 U.S.C. 553(a)(2) and (d)(3), a delayed effective date is not required.

Executive Order 12291

Because this document relates to agency management, it is not subject to Executive Order 12291.

Regulatory Flexibility Act

Because of notice of proposed rulemaking is required, the provisions of

the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Drafting Information

The principal author of this document was Harold M. Singer, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 4

Customs duties and inspection, Cargo vessels, Maritime carriers, Vessels.

Amendment to the Regulations

Part 4 of the Customs Regulations (19 CFR part 4) is amended as set forth below:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority for part 4 continues to read as follows and the specific authority for § 4.69 is added:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624; 46 U.S.C. App. 3.

* * * * *

Section 4.69 also issued under 46 U.S.C. 10301, 10302, 10314, and 10315.

* * * * *

2. Section 4.69 is revised to read as follows:

§ 4.69 Shipping articles.

No vessel of the U.S. on a voyage between a U.S. port and a foreign port (except a port in Canada, Mexico, or the West Indies), or if of at least 75 gross tons, on a voyage between a U.S. port on the Atlantic Ocean and a U.S. port on the Pacific Ocean, shall be granted clearance before presentation, to the appropriate Customs officer, of the shipping articles agreements, including any seaman's allotment agreement, required by 46 U.S.C. chapter 103, in the form provided for in 46 CFR 14.05–1.

Editorial Note: This document was received at the Office of the Federal Register on June 1, 1992.

Carol Hallett,

Commissioner of Customs.

Approved: January 22, 1992.

Peter K. Nunez,

Assistant Secretary of the Treasury.

[FR Doc. 92–13129 Filed 6–4–92; 8:45 am]

BILLING CODE 4820–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Regulation No. 4]

RIN 0960–None Assigned

Federal Old-Age, Survivors and Disability Insurance Determining Disability and Blindness; Extension of Expiration Date for Cardiovascular System Listing

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: We are extending the date on which part A of the cardiovascular system listings found in appendix 1 of part 404, subpart P, will no longer be effective from June 6, 1992, to January 5, 1993. We have made no revisions in the medical criteria in the cardiovascular listings; they remain the same as they now appear in the Code of Federal Regulations. We are presently considering comments we received on a proposed rule to update the medical criteria contained in Part A and Part B of the listings. When we have completed our review, and revised criteria will be published as final regulations.

EFFECTIVE DATE: This final rule will be effective June 5, 1992.

FOR FURTHER INFORMATION CONTACT: Irving Darrow, Esq., Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 966–0512.

SUPPLEMENTARY INFORMATION: On December 6, 1985, a revised Listing of Impairments in appendix 1 to subpart P of part 404 was published in the **Federal Register** (50 FR 50068). The Listing of Impairments describes, for each of the 13 major body systems, impairments that are considered severe enough to preclude a person from engaging in any gainful activity (Part A), or in the case of a child under the age of 18, impairments that are severe enough to prevent the child from functioning independently, appropriately, and effectively in an age-appropriate manner (Part B). The Listing of Impairments is used for evaluating disability and blindness under the Social Security disability program and the supplemental security income program.

When the revised Listing of Impairments was published in 1985, we indicated that disability evaluation and treatment and program experience would require that the listing be periodically reviewed and updated. Accordingly, expiration dates were established ranging from 4 to 8 years for each of the specific body systems. A date of December 6, 1989, was established for the cardiovascular system listings in Part A to no longer be effective. A date of December 6, 1993, was established for Part B of the listings to no longer be effective.

The potential program impact of the changes to update the listings required careful analysis and consideration within the Agency. As our study and analysis continued, it became evident that we would be unable to publish a proposed and then a final regulation containing revised criteria for Part A of the cardiovascular listings by December 6, 1989. We published in the **Federal Register** of December 5, 1989 (54 FR 50233), a final regulation extending the current cardiovascular listings for a period of 18 months through June 5, 1991. The cardiovascular listings were again extended an additional 12 months through June 5, 1992, by final regulation published in the **Federal Register** on June 6, 1991 (56 FR 26030).

Proposed revisions to the medical criteria contained in Parts A and B of the cardiovascular system listings were published in the **Federal Register** on July 9, 1991 (56 FR 31266), with provisions for a 60-day comment period. Because the issues raised by the comments have required careful consideration, we find that we will not have sufficient time to publish a final regulation in the **Federal Register** by June 6, 1992. We have, therefore, decided to extend the date on which the current cardiovascular system listings in Part A will no longer be effective for an additional 7 months—from June 6, 1992, to January 5, 1993.

Regulatory Procedures

The Department, even when not required by statute, as a matter of policy, generally follows the Administrative Procedure Act notice of proposed rulemaking and public comment procedures specified in 5 U.S.C. 553 in the development of its regulations. The Administrative Procedure Act provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for waiver of notice of proposed rulemaking and public comment procedures on this rule because it only extends the expiration date of Part A of the cardiovascular

listings and makes no substantive changes to these listings. The current regulations expressly provide that the listings may be extended by the Secretary, as well as revised and promulgated again.

Because we are not making any revisions to the current listings, use of public comment procedures is not contemplated by the existing regulations and is unnecessary under the Administrative Procedure Act. After our review of comments submitted with respect to the proposed revisions to the existing criteria, a final regulation will be published.

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because this regulation does not meet any of the threshold criteria for a major rule. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that this regulation will not have a significant economic impact on a substantial number of small entities because it only affects disability claimants under titles II and XVI of the Act.

Paperwork Reduction Act

This regulation imposes no reporting or recordkeeping requirements necessitating clearance by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program No. 93.802, Social Security Disability Insurance; No. 93.807, Supplemental Security Income Program)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

Dated: April 14, 1992.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: May 21, 1992.

Louis W. Sullivan,

Secretary of Health and Human Services.

For the reasons set forth in the preamble, part 404, title 20 of the Code of Federal Regulations is amended as set forth below.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950-)

1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a), (b), and (d)–(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 1102 of the Social Security Act; 42 U.S.C. 402, 405(a), (b) and (d)–(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 1302.

Appendix 1 to Subpart P—[Amended]

2. Appendix 1 to Subpart P is amended by revising the fourth paragraph of the introductory text to read as follows:

Appendix 1 to Subpart P—Listing of Impairments

* * * * *

The cardiovascular system (4.00) will no longer be effective on January 5, 1993.

* * * * *

[FR Doc. 92–13279 Filed 6–4–92; 8:45 am]

BILLING CODE 4190–29–M

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20 CFR Part 404

RIN 0960–None Assigned

Federal Old-Age, Survivors and Disability Insurance; Determining Disability and Blindness; Extension of Expiration Date for Musculoskeletal System Listings

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: We are extending the date on which Part A of the musculoskeletal system listings found in appendix 1 of part 404, subpart P, will no longer be effective from June 6, 1992, to December 6, 1993. We have made no revisions in the medical criteria in the musculoskeletal listings; they remain the same as they now appear in the Code of Federal Regulations. We are presently considering revisions to update the medical criteria contained in the listings, and any revised criteria will be published as proposed rules when we have completed our review. Under this final rule extending the expiration date of the musculoskeletal system listings, we will continue to use the existing criteria until any revised criteria are published as final rules.

EFFECTIVE DATE: This final rule will be effective June 5, 1992.

FOR FURTHER INFORMATION CONTACT: Irving Darrow, Esq., Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 966–0512.

SUPPLEMENTARY INFORMATION: On December 6, 1985, a revised Listing of Impairments in appendix 1 to subpart P of part 404 was published in the **Federal Register** (50 FR 50068). The Listing of Impairments describes, for each of the 13 major body systems, impairments that are considered severe enough to prevent an adult from performing any gainful activity (part A), or in the case of a child under the age of 18, impairments which are severe enough to prevent the child from functioning independently, appropriately, and effectively in an age-appropriate manner (part B). The Listing of Impairments is used for evaluating disability and blindness under the Social Security disability program and the supplemental security income program.

When the revised Listing of Impairments was published in 1985, we indicated that disability evaluation and treatment and program experience would require that the listing be periodically reviewed and updated. Accordingly, expiration dates were established ranging from 4 to 8 years for each of the specific body systems. A date of December 6, 1990, was established for the musculoskeletal system listings in part A to no longer be effective. A date of December 6, 1993, was established for part B of the listings to no longer be effective.

The potential program impact of the changes to update the listings required careful analysis and consideration within the Agency. As our study and analysis continued, it became evident that we would be unable to publish a proposed and then a final regulation containing revised criteria for part A of the musculoskeletal system listings by December 6, 1990. We, therefore, published in the **Federal Register** of December 12, 1990 (55 FR 51100), a final regulation extending the current musculoskeletal system listings for a period of 18 months through June 5, 1992.

Before proposing revisions to the current musculoskeletal listings, we must consider and resolve a variety of medical issues affecting both adults and children. We also want to give special attention to ensuring consistency between the proposed adult and childhood listings, while also recognizing the particular considerations appropriate to children. Because of the complexity of these medical and technical tasks, we find that we will not have sufficient time to publish a notice of proposed rulemaking setting out any proposed revisions to the current listings that may be necessary and then publish a final regulation in the **Federal Register** by June 6, 1992. We have, therefore, decided to extend the date on which the current musculoskeletal system listings in part A will no longer be effective for an additional period of 18 months—from June 6, 1992, to December 6, 1993.

Regulatory Procedures

The Department, even when not required by statute, as a matter of policy, generally follows the Administrative Procedure Act notice of proposed rulemaking and public comment procedures specified in 5 U.S.C. 553 in the development of its regulations. The Administrative Procedure Act provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for waiver of notice of proposed rulemaking and public comment procedures on this rule because it only extends the expiration date of Part A of the musculoskeletal system listings and makes no substantive changes to these listings. The current regulations expressly provide that the listings may be extended by the Secretary, as well as revised and promulgated again. Because we are not making any revisions to the current listings, use of public comment procedures is not contemplated by the existing regulations and is unnecessary under the Administrative Procedure Act. After our review of the existing musculoskeletal system listings is completed, any proposed revisions to the existing criteria will be published for public comment.

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because this regulation does not meet any of the threshold criteria for a major rule. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that this regulation will not have a significant economic impact on a substantial number of small entities because it only affects disability claimants under titles II and XVI of the Act.

Paperwork Reduction Act

This regulation imposes no reporting or recordkeeping requirements necessitating clearance by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program No. 93.802, Social Security Disability Insurance; No. 93.807, Supplemental Security Income Program)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

Dated: April 14, 1992.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: May 21, 1992.

Louis W. Sullivan,

Secretary of Health and Human Services.

For the reasons set forth in the preamble, part 404 of title 20 of the Code of Federal Regulations is amended as set forth below.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950-)

1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205 (a), (b), and (d)–(h), 216(i), 221 (a) and (i), 222(c), 223, 225, and 1102 of the Social Security Act; 42 U.S.C. 402, 405 (a), (b) and (d)–(h), 416(i), 421 (a) and (i), 422(c), 423, 425, and 1302.

Appendix 1 to Subpart P—[Amended]

2. Appendix 1 to subpart P is amended by revising the second paragraph of the introductory text to read as follows:

Appendix 1 to Subpart P—Listing of Impairments

* * * * *

The musculoskeletal system (1.00) will no longer be effective on December 6, 1993.

* * * * *

[FR Doc. 92–13281 Filed 6–4–92; 8:45 am]

BILLING CODE 4190–29–M

Food and Drug Administration

21 CFR Part 176

[Docket No. 87F–0239]

Indirect Food Additives: Paper and Paperboard Components

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of a polyamide-epichlorohydrin resin prepared by reacting *N*-methyl-bis (3-aminopropyl) amine with oxalic acid and urea to form a basic polyamide and further reacting the polyamide with epichlorohydrin. The polyamide-epichlorohydrin resin will be used to impart wet strength to paper and paperboard in contract with aqueous and fatty foods. This action is in response to a petition filed by Hercules, Inc.

DATES: Effective June 5, 1992; written objections and requests for a hearing by July 6, 1992.

ADDRESSES: Written objections may be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Marvin D. Mack, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 205–254–9511.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of August 17, 1987 (52 FR 30740), FDA announced that a food additive petition (FAP 7B3986) had been filed by Hercules, Inc., Hercules Plaza, Wilmington, DE 19894, proposing that Section 176.170 *Components of Paper and Paperboard in Contact With Aqueous and Fatty Foods* (21 CFR 176.170) be amended to provide for the safe use of polyamide-epichlorohydrin water-soluble thermosetting resins prepared by reacting *N*-methyl-bis (3-aminopropyl) amine with oxalic acid and urea or dimethylglutarate to form a basic polyamide and further reacting the polyamide with epichlorohydrin. The polyamide-epichlorohydrin resins will be used to impart wet strength to paper and paperboard in contact with aqueous and fatty foods.

Since publication of the filing notice, the petitioner has withdrawn a request to list the proposed use of the polyamide-epichlorohydrin resin prepared by reacting *N*-methyl-bis (3-aminopropyl) amine with dimethylglutarate to form a basic polyamide and further reacting the polyamide with epichlorohydrin.

FDA, in the evaluation of the safety of the additive, reviewed the safety of the additive, the starting materials used to manufacture the additive, and manufacturing impurities that may be present in the additive. Although the additive itself has not been found to cause cancer, it has been found to contain minute amounts of epichlorohydrin as an impurity from its production. This chemical has been shown to cause cancer in test animals. Residual amounts of reactants, such as epichlorohydrin, are commonly found as contaminants in chemical products, including food additives.

I. Determination of Safety

Under section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), the so-

called "general safety clause" of the statute, a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. The concept of safety embodied in the Food Additives Amendment of 1958 (the amendment) is explained in the legislative history of the provision: "Safety requires proof of a reasonable certainty that no harm will result from the proposed use of an additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstance." (H. Rept. 2284, 85th Cong., 2d sess. 4 (1958)). This definition of safety has been incorporated into FDA's food additive regulations (21 CFR 170.3(i)). The anticancer or Delaney clause of the amendment (section 409(c)(3)(A) of the act) (21 U.S.C. 348(c)(3)(A)) provides further that no food additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal.

In the past, FDA has often refused to approve the use of an additive that contained or was suspected of containing even minor amounts of a carcinogenic chemical, even though the additive as a whole had not been shown to cause cancer. The agency now believes, however, that developments in scientific technology and experience with risk assessment procedures make it possible for FDA to establish the safety of additives that contain carcinogenic chemicals but that have not themselves been shown to cause cancer.

In the preamble to the final rule permanently listing D&C Green No. 6, published in the **Federal Register** of April 2, 1982 (47 FR 14138), FDA explained the basis for approving the use of a color additive that had not been shown to cause cancer, even though it contains a carcinogenic impurity. Since that decision, FDA has approved the use of other color additives and food additives on the same basis.

An additive that has not been shown to cause cancer, but that contains a carcinogenic impurity, may properly be evaluated under the general safety clause of the statute using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive.

The agency's position is supported by *Scott* v. *FDA*, 728 F. 2d 322 (6th Cir. 1984). That case involved a challenge to FDA's decision to approve the use of D&C Green No. 5, which contains a carcinogenic chemical but has itself not been shown to cause cancer. Relying heavily on the reasoning in the agency's decision to list this color additive, the U.S. Court of Appeals for the Sixth Circuit rejected the challenge to FDA's action and affirmed the listing regulation.

II. Safety of Petitioned Use of the Additive

FDA estimates that the petitioned use of the polyamide-epichlorohydrin resin will result in extremely low levels of exposure to this additive. The agency estimated the probable daily intake of the additive based on considerations such as the migration of the additive under the most severe intended use conditions and the types of food-contact articles that may contain this substance. The agency estimated that the probable daily intake for the additive would not exceed 18 micrograms (μg) per person per day.

FDA does not ordinarily consider chronic testing to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Refs. 1 and 2), and the agency has not required such testing here. However, the agency has reviewed other available toxicological data. On the basis of the agency's review of these data and of the low level of migration of the resin, the agency concludes that there is an adequate margin of safety for the proposed use of the additive.

As stated above, the additive may contain epichlorohydrin, a substance that has been shown to cause cancer in test animals. This impurity may be present as a residue from manufacturing the additive. However, because the additive itself has not been shown to cause cancer, the Delaney Clause (21 U.S.C. 348(c)(3)(A)) does not apply to it.

FDA has evaluated the safety of this additive under the general safety clause, considering all available data and using risk assessment procedures to estimate the upper-bound limit of risk presented by the carcinogenic chemical, epichlorohydrin, that may be present as an impurity in this additive. Based on this evaluation, the agency has concluded that the additive is safe under the proposed conditions of use.

The risk assessment procedures that FDA used in this evaluation are similar to the methods that the agency has used to examine the risk associated with the presence of minor carcinogenic impurities in various other food and color additives that contain carcinogenic impurities (see, e.g., 49 FR 13018 and 13019, April 2, 1984). The risk evaluation of the carcinogenic impurity has two aspects: (1) Assessment of the worst-case exposure to the impurity from the proposed use of the additive, and (2) extrapolation of the risk observed in the animal bioassays to the conditions of probable exposure to humans.

A. Epichlorohydrin

Based on the fraction of the daily diet that may be in contact with surfaces containing the polyamide-epichlorohydrin resin and on the level of epichlorohydrin that may be present in the additive, FDA estimated that the hypothetical worst-case exposure to epichlorohydrin from the use of the additive in paper and paperboard to be 0.15 μg per person per day (Refs. 3 and 4). The agency used data from a Japanese carcinogenesis bioassay (Ref. 5) on epichlorohydrin fed to rats in their drinking water to estimate the upper-bound level of lifetime human risk from exposure to this chemical stemming from the proposed use of this resin. The results of the bioassay demonstrated that epichlorohydrin was carcinogenic for rats under the conditions of the study. The test material caused significantly increased incidences of stomach papillomas and carcinomas in the rats.

The Center for Food Safety and Applied Nutrition's Cancer Assessment Committee reviewed this bioassay and other relevant data available in the literature and concluded that the findings of carcinogenicity were supported by this information on epichlorohydrin. The committee further concluded that an estimate of the upper-bound limit of lifetime human risk from potential exposure to epicholorohydrin stemming from the proposed use of the resin could be calculated from the bioassay.

Based on a worst-case exposure of 0.15 μg per person per day, FDA estimates that the upper-bound limit of individual lifetime risk from potential exposure to epichlorohydrin from the use of this polyamide-epichlorohydrin water-soluble thermosetting resin is 7×10^{-9}, or less than 1 in 140 million (Ref. 6). Because of numerous conservatisms in the exposure estimate, actual lifetime-averaged individual exposure to epichlorohydrin is expected to be substantially less than the estimated daily intake, and, therefore, the actual risk would be less than the calculated upper-bound limit. Thus, the agency concludes that there is a reasonable certainty of no harm from exposure to epichlorohydrin that might result from the proposed use of the polyamide-epichlorohydrin resin.

B. Need for Specifications

The agency has also considered whether specifications are necessary to control the amount of epichlorohydrin in

the food additive. The agency finds that specifications are not necessary for the following reasons: (1) Because the trace amounts of epichlorohydrin that might be present in the additive can be expected to be virtually eliminated from the paper during subsequent paper processing operations and by the heat during drying steps, the agency would not expect this impurity to become a component of food at other than extremely small amounts, and (2) the upper-bound limit of lifetime risk from exposure to epichlorohydrin, even under worst-case assumptions, is very low, less than 1 in 140 million.

C. Conclusion on Safety

FDA has evaluated the available toxicity data and the exposure calculation for the resin and has found it to be safe and effective for the intended use based upon the extremely low levels of exposure to the resin and upon evaluation of the data furnished in the petition. Accordingly, FDA concludes that the regulation in § 176.170 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

III. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

IV. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Carr, G.M., "Carcinogen Testing Programs" in *Food Safety: Where Are We?*, Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, pp. 59–67, July 1979.

2. Kokoski, C.J., "Regulatory Food Additive Toxicology," *Chemical Safety Regulation and Compliance*, edited by Homburger, F., and J.K. Marquis, New York, pp. 24–33, 1985.

3. Memorandum from the Food and Color Additives Review Section to the Indirect Additives Branch, "Polyamide-Epichlorohydrin Resin for Use in Paper and Paperboard," dated March 3, 1988.

4. Memorandum from the Food Additives and Animal Drug Chemistry Evaluation Branch to the Petitions Control Branch, "Consumption Estimates for Epichlorohydrin," dated October 15, 1982.

5. Konishi, Y. et al., "Forestomach Tumors Induced by Orally Administered Epichlorohydrin in Male Wistar Rats," *Gan No Rinsho (Japanese Journal of Cancer Clinics)*, 71:922–923, 1980.

6. Report of the Quantitative Risk Assessment Committee, "Upper Bound Risk Estimation for the Carcinogenic Impurity, Epichlorohydrin, in FAP 7B3966," dated October 27, 1988.

V. Objections

Any person who will be adversely affected by this regulation may at any time on or before July 6, 1992 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 176

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 176 is amended as follows:

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

1. The authority citation for 21 CFR part 176 continues to read as follows:

Authority: Secs. 201, 402, 406, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 346, 348, 376).

2. Section 176.170 is amended in paragraph (a)(5) by alphabetically adding a new entry to the table to read as follows:

§ 176.170 Components of paper and paperboard in contact with aqueous and fatty foods.

* * * * *

(a) * * *

(5) * * *

List of substances	Limitations
* * * * * * * *	
Polyamide-epichlorohydrin water-soluble thermosetting resin (CAS Reg. No. 96387–48–3) prepared by reacting *N*-methyl-bis(3-aminopropyl) amine with oxalic acid and urea to form a basic polyamide and further reacting the polyamide with epichlorohydrin.	For use only as a wet strength agent and/or retention aid employed prior to the sheet-forming operation in the manufacture of paper and paperboard and used at a level not to exceed 1.5 percent by weight of dry paper and paperboard fibers.
* * * * * * * *	

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Dated: May 28, 1992.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 92–13133 Filed 6–4–92; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Part 178

[Docket No. 89F–0156]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of *N,N*-bis (2-hydroxyethyl) butylamine; bis (hydrogenated tallow alkyl) aminoethanol; isotridecyl alcohol, ethoxylated; bis (hydrogenated tallow alkyl) amine; and diethylene glycol monobutylether as components of lubricants used in the manufacture of metallic articles for food-contact use. This action is in response to a petition filed by Berol (Suisse) S.A. Fribourg (formally Alunique S.A.).

DATES: Effective June 5, 1992; written objections and requests for a hearing by July 6, 1992.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9500.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of June 7, 1989 (54 FR 24425), FDA announced that a food additive petition (FAP 9B4145) had been filed by Alunique S.A., 56 Grand Rue, CH 1700 Fribourg, Switzerland, proposing that section 178.3910 *Surface Lubricants Used in the Manufacture of Metallic Articles* (21 CFR 178.3910) be amended to provide for the safe use of the following additives as components of lubricants in the manufacture of metallic articles for food-contact use:

(1) *N,N*-Di (2-hydroxyethyl) butylamine.

(2) Bis (hydrogenated tallow-alkyl) aminoethanol.

(3) Isotridecyl alcohol, ethoxylated.

(4) Bis (hydrogenated tallow-alkyl) amine.

(5) Diethyleneglycol monobutylether.

In the remainder of this preamble and in the rule set forth below, the agency refers respectively to the compounds listed above by their more appropriate chemical names: *N,N*-Bis (2-hydroxyethyl) butylamine; bis (hydrogenated tallow-alkyl) aminoethanol; isotridecyl alcohol, ethoxylated; bis (hydrogenated tallow alkyl) amine; and diethylene glycol monobutylether. The petitioner, Alunique S.A., has been replaced by Berol (Suisse) S.A. Fribourg, c/o Lenz, Schluep, Briner, & de Coulon, Grand Rue 25, 1211 Geneva 11 Switzerland.

FDA, in its evaluation of the safety of these additives, reviewed the safety of both the additives and the starting materials used to manufacture the additives. The additives themselves have not been found to cause cancer. However, all of the additives except bis (hydrogenated tallow alkyl) aminoethanol may contain minute amounts of ethylene oxide and 1,4 dioxane as byproducts of their production; these chemicals have been shown to cause cancer in test animals. Residual amounts of reactants and manufacturing aids, such as these chemicals, are commonly found as contaminants in chemical products, including food additives.

I. Determination of Safety

Under section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), the so-called "general safety clause" of the statute, a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. The concept of safety embodied in the Food Additives Amendment of 1958 is explained in the legislative history of the provision: "Safety requires proof of a reasonable certainty that no harm will result from the proposed use of an additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstance. (H. Rept. 2284, 85th Cong., 2d sess. 4 (1958).) This definition of safety has been incorporated into FDA's food additive regulations (§ 170.3(i)). The anticancer or Delaney clause of the Food Additives Amendment (section 409(c)(3)(A)) of the act provides further that no food additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal.

In the past, FDA often refused to approve the use of an additive that contained or was suspected of containing even minor amounts of a carcinogenic chemical, even though the additive as a whole had not been shown to cause cancer. The agency now believes, however, that developments in scientific technology and experience with risk assessment procedures have made it possible for FDA to establish the safety of additives that contain carcinogenic impurities but that have not themselves been shown to cause cancer.

In the preamble to the final rule permanently listing D&C Green No. 6, published in the **Federal Register** of April 2, 1982 (47 FR 14138), FDA explained the basis for approving the use of a color additive that had not been shown to cause cancer, even though it contained a carcinogenic impurity. Since that decision, FDA has approved the use of other color additives and food additives on the same basis. FDA fully explained the scientific, legal, and policy underpinnings for these decisions in the advance notice of proposed rulemaking on a policy for regulating carcinogenic chemicals in food and color additives, published in the **Federal Register** of April 2, 1982 (47 FR 14464).

The agency now believes that the Delaney or anticancer clause is applicable only when the food additive as a whole is found to cause cancer. An additive that has not been shown to cause cancer, but that contains a carcinogenic impurity, may properly be evaluated under the general safety provision of the statute using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive.

The agency's position is supported by *Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984). That case involved a challenge to FDA's decision to approve the use of D&C Green No. 5, which contains a carcinogenic chemical but has itself not been shown to cause cancer. Relying heavily on the reasoning in the agency's decision to list this color additive, the United States Court of Appeals for the Sixth Court rejected the challenge to FDA's action and affirmed the listing regulation.

II. Safety of Petitioned Use

FDA estimated that the petitioned use of the five additives will result in extremely low levels of exposure. The agency has calculated estimated daily intakes for these additives based on the potential residue levels of the additives on food contact surfaces under the most severe intended use conditions and the probable concentration of the additives in the daily diet from food-contact articles that may contain them as a consequence of having been manufactured by a process in which the

additives were used as components of lubricants. The maximum concentration of each additive in the daily diet and the estimated daily intake (EDI) for the additives are not expected to exceed the following:

Daily dietary intake		
Components	Concentration (parts per billion)	EDI (micrograms per day)
N,N-Bis(2-hydroxyethyl) butylamine	4	11
Bis (hydrogenated tallow alkyl) amine	0.03	0.08
Bis(hydrogented tallow alkyl) aminoethanol	0.11	0.32
Diethylene glycol monobutylether	6	18
Isotridecyl alcohol, ethoxylated	0.09	0.3

FDA does not ordinarily consider chronic testing to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Refs. 1 and 2) and has not required such testing here. Because these additives have not been shown to cause cancer, the anticancer clause does not apply to them. However, the agency has reviewed data from acute oral toxicity studies on these lubricant formulation components and concludes that there is an adequate margin of safety for the proposed use of the additives.

For the four additives that may contain the carcinogenic impurities ethylene oxide and 1,4-dioxane, FDA has evaluated the safety of the additives under the general safety provision, using risk assessment procedures to estimate the upper-bound limit of risk presented by the two carcinogenic chemicals.

The risk assessment procedures that FDA used in this evaluation are similar to the methods that it has used to examine the risk associated with the presence of minor carcinogenic impurities in various other food and color additives that contain carcinogenic impurities (e.g., 49 FR 13018 at 13019, April 2, 1984). This risk evaluation of the carcinogenic impurities ethylene oxide and 1,4-dioxane has two aspects: (1) Assessment of the worst-case exposure to the impurities from the proposed use of the additive; and (2) extrapolation of the risk observed in the animal bioassays to the conditions of probable exposure to humans.

A. The Impurity 1,4-Dioxane

Based on the fraction of the daily diet that may contact surfaces containing the four additives, the residue levels on these surfaces, as well as the level of 1,4-dioxane that may be present in the additives (Ref. 3), FDA estimated the hypothetical worst-case exposure to 1,4-dioxane from the use of these additives (in nanograms per person per day (ng/p/day)) to be as follows:

Components	1,4-dioxane (ng/p/day)
N,N-Bis(2-hydroxyethyl)butylamine	1.2
Bis(hydrogenated tallow alkyl)aminoethanol	0.016
Diethylene glycol monobutylether	0.18
Isotridecyl alcohol, ethoxylated	0.0027

The agency used data in a carcinogenesis bioassay on 1,4-dioxane conducted for the National Cancer Institute (Ref. 4) to estimate the upper-bound level of lifetime human risk from exposure to this chemical stemming from the proposed use of the additives. The results of the bioassay on 1,4-dioxane demonstrated that the material was carcinogenic for female rats under the conditions of the study. The test material caused significantly increased incidence of squamous cell carcinomas and hepatocellular tumors in female rats.

The Center for Food Safety and Applied Nutrition's Cancer Assessment Committee (the CAC) reviewed this bioassay and other relevant data available in the literature and concluded that the findings of carcinogenicity were supported by this information on 1,4-dioxane. The Quantitative Risk Assessment Committee (the QRAC) concluded that an estimate of the upper-bound level of lifetime human risk from potential exposure to 1,4-dioxane stemming from the proposed use of these additives could be calculated from the bioassay (Ref. 5).

The agency used a quantitative risk assessment procedure (linear proportional model) to extrapolate to potential human exposure from the doses encountered under the proposed conditions of use. This procedure is not likely to underestimate the actual risk from very low exposures and may, in fact, exaggerate it because the extrapolation models used are designed to estimate the maximum risk consistent with the data. For this reason, the estimate can be used with confidence to determine to a reasonable certainty whether any harm will result from the proposed conditions and levels of use of these food additives. Based on worst-case exposures mentioned above, FDA estimates the upper-bound limit of individual lifetime risk from potential exposure to 1,4-dioxane (Ref. 5) from the use of these additives to be as follows:

Components	1,4-dioxane upper-bound lifetime risk
N,N-Bis(2-hydroxyethyl) butylamine.	4×10^{-11} (or 4 in 100 billion).
Bis(hydrogenated tallow alkyl)aminoethanol.	6×10^{-13} (or 6 in 10 trillion).
Diethylene glycol monobutylether.	6×10^{-12} (or 6 in 1 trillion).
Isotridecyl alcohol, ethoxylated.	1×10^{-13} (or 1 in 10 trillion).

Because of numerous conservatisms in the exposure estimate, lifetime-averaged individual exposure to 1,4-dioxane is expected to be substantially less than the estimated daily intake, and therefore the calculated upper-bound risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from exposure to 1,4-dioxane that may result from the proposed use of the above listed additives.

B. The Impurity Ethylene Oxide

Based on the fraction of the daily diet that may contact surfaces containing the four additives, the residue levels on these surfaces, as well as the level of ethylene oxide that may be present in the additives (Ref. 3), FDA also estimated the hypothetical worst-case exposure to ethylene oxide from the use of these additives to be as follows:

Components	Ethylene oxide (ng/p/day)
N,N-Bis(2-hydroxyethyl) butylamine	0.16
Bis(hydrogenated tallow alkyl)aminoethanol	0.016
Diethylene glycol monobutylether	0.090
Isotridecyl alcohol, ethoxylated	0.0054

The agency used data in a carcinogenesis bioassay on ethylene oxide conducted by the Institute of Hygiene, University of Mainz, Germany (Ref. 6), to estimate the upper-bound level of lifetime human risk from exposure to this chemical stemming from the proposed use of these additives. The results of the bioassay on ethylene oxide demonstrated that this material was carcinogenic for female rats under the conditions of the study. The test material caused a significantly increased incidence of squamous cell carcinoma of the forestomach and carcinoma, in situ, of the glandular stomach.

The CAC reviewed this bioassay and other relevant data available in the literature and concluded that this information on ethylene oxide supported the finding of carcinogenicity. The QRAC further concluded that an estimate of the upper-bound limit of

lifetime human cancer risk from potential exposure to ethylene oxide could be made from the bioassay.

Based on worst-case exposures listed above, FDA estimates, using a linear proportional model, the upper-bound limit of individual lifetime risk from potential exposure to ethylene oxide (Ref. 5) from the use of these additives to be as follows:

Component	Ethylene oxide upper-bound lifetime risk
N,N-Bis(2-hydroxyethyl) butylamine.	3×10^{-10} (or 3 in 10 billion)
Bis(hydrogenated tallow alkyl) aminoethanol.	3×10^{-11} (or 3 in 100 billion)
Diethylene glycol monobutylether.	2×10^{-10} (or 2 in 10 billion)
Isotridecyl alchohol, ethoxylated.	1×10^{-11} (or 1 in 100 billion)

Because of numerous conservatisms in the exposure estimate, lifetime-averaged individual exposure to ethylene oxide is expected to be substantially less than the estimated daily intake, and therefore, the calculated upper-bound risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from the exposure to ethylene oxide that may result from the use of these additives.

III. Need for Specifications

The agency has also considered whether specifications are necessary to control the amount of the ethylene oxide and 1,4-dioxane impurities in the food additives. The agency finds that specifications are not necessary for the following reasons: (1) Production specifications will control the levels of residual ethylene oxide and 1,4-dioxane, such that the agency would not expect these impurities to become components of food at other than extremely low levels; and (2) the upper-bound limit of lifetime risk from exposure to these impurities, even under a worst-case assumption, is very low.

IV. Conclusion on Safety

FDA has evaluated the available toxicity data and the estimated exposure for the additives and has determined that the additives are safe for their proposed use and that 21 CFR 178.3910(a)(2) be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

V. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

VI. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Carr, G. M., "Carcinogen Testing Programs" in "Food Safety: Where Are We?," p. 59, Committee on Agriculture, Nutrition, and Forestry, United States Senate, July 1979.

2. Kokoski, C. J., "Regulatory Food Additive Toxicology," presented at the Second International Conference on Safety Evaluation and Regulation of Chemicals, Cambridge, MA, October 24, 1983.

3. Memorandum dated November 1, 1989, from Food and Color Additives Review Section (HFF-415), to Indirect Additives Branch, FAP 9B4145—Berol Nobel Stenungsund AB (formerly Berol Keni AB) (BNS), "Rolling Fluid Formation/Metal Foil," October 10, 1989.

4. "Bioassay of 1,4-Dioxane for Possible Carcinogenicity," National Cancer Institute, NCI-CG-TR-80, 1978.

5. Report of the Quantitative Risk Assessment Committee, "FAP 9B4145—Estimation of Upper-Bound Risk for Ethylene Oxide and 1,4-Dioxane in Rolling Fluid Formulation/Metal Foil (Berol Nobel Stenungsund AB)," February 4, 1991.

6. Dunkelberg, H., "Carcinogenicity of Ethylene Oxide and 1,2-Propylene Oxide upon Intragastric Administration to Rats," British Journal of Cancer, 46:924, 1982.

VII. Objections

Any person who will be adversely affected by this regulation may at any time on or before July 6, 1992 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: Secs. 201, 402, 409, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 376).

2. Section 178.3910 is amended in paragraph (a)(2) by alphabetically adding five new entries to the table to read as follows:

§ 178.3910 Surface lubricants used in the manufacture of metallic articles.

* * * * *

(a) * * *

(2) * * *

List of substances	Limitations
* * * * * * *	
Bis(hydrogenated tallow alkyl)amine (CAS Reg. No. 61789-79-5)	Not to be used in combination with sodium nitrite.
Bis(hydrogenated tallow alkyl)aminoethanol (CAS Reg. No. 116438-56-3)	
N,N-Bis(2-hydroxyethyl)butylamine (CAS Reg. No. 102-79-4)	
* * * * * * *	

List of substances	Limitations
Diethylene glycol monobutylether (CAS Reg. No. 112-34-5)	
* * * * * * *	
Isotridecyl alcohol, ethoxylated (CAS Reg. No. 9043-30-5)	
* * * * * * *	

* * * * *

Dated: May 28, 1992.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 92-13134 Filed 6-4-92; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Monensin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Elanco Animal Health. The supplemental NADA provides for the use of an additional concentration of monensin Type A medicated article (80 grams of monensin sodium per pound of product) to be used as currently approved to make Type B and Type C medicated cattle and goat feeds.

EFFECTIVE DATE: June 5, 1992.

FOR FURTHER INFORMATION CONTACT: William G. Marnane, Center for Veterinary Medicine (HFV-143), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8678.

SUPPLEMENTARY INFORMATION: Elanco Animal Health, A Division of Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285, has filed a supplement to NADA 95-735, providing for the use of an 80-grams-per-pound monensin Type A medicated article in addition to the currently approved 20-, 30-, 45-, and 60-grams-per-pound articles. The Type A medicated article is to be used as currently approved in § 558.355 (f)(3) and (f)(6) (21 CFR 558.355 (f)(3) and (f)(6)) to make Type B and Type C medicated cattle and goat feeds, respectively.

The supplemental NADA is approved as of May 4, 1992, and the regulations are amended in paragraphs (b)(7) and (b)(14) of § 558.355 to reflect the approval.

Under 21 CFR 514.106(b)(2), this is a Category II supplement that did not require reevaluation of the underlying safety and effectiveness data in the parent application because the approved uses of the product have not been changed. Because the sponsor was not required to submit new safety and effectiveness data, a freedom of information summary was not required.

As provided in 21 CFR 558.4(a), monensin is a Category I, Type A medicated ariticle, which as the sole drug ingredient, does not require an approved Form FDA 1900 for making Type B and Type C medicated feeds as permitted under § 558.355 (f)(3) and (f)(6). Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this supplement does not qualify for marketing exclusivity because neither new clinical or field studies, nor human food safety studies (other than bioequivalence or residue studies) essential to the approval and conducted or sponsored by the applicant, were required for its approval.

The agency has determined under 21 CFR 25.24(d)(1)(iii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

2. Section 558.355 is amended by revising paragraphs (b)(7) and (b)(14) to read as follows:

§ 558.355 Monensin.

* * * * *

(b) * * *

(7) To 000986: 20, 30, 45, 60, and 80 grams per pound, as monensin sodium, paragraph (f)(3) of this section.

* * * * *

(14) To 000986: 60 and 80 grams per pound, as monensin sodium, paragraph (f)(6) of this section.

* * * * *

Dated: June 1, 1992.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 92-13188 Filed 6-4-92; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 901

[Docket No. R-91-1520; FR-2897-I-05]

RIN 2577-AA89

Public Housing Management Assessment Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of extension of time for submission of comments.

SUMMARY: On January 17, 1992, HUD published an interim rule implementing the Public Housing Management Assessment Program, and requesting comments by May 18, 1992. The purpose of this Notice is to extend the time for submission of applications until July 20, 1992.

DATES: The comment due date originally announced for May 18, 1992 is extended by this Notice to July 20, 1992.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. An original and three copies of comments should be submitted. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Casimir R. Bonkowski, Director, Office of Management and Policy, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–0440. A telecommunications device for hearing or speech impaired persons (TDD) is available at (202) 708–0850. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION: A proposed rule for the Public Housing Management Assessment Program (PHMAP) in accordance with section 502 of the National Affordable Housing Act (approved November 28, 1990, Public Law 101–625, hereinafter, NAHA) was published in the **Federal Register** on April 17, 1991 (56 FR 15712), with a 60 day comment period. The Department received 114 comments on the PHMAP proposed rule. On January 17, 1992 (57 FR 2160), HUD published an interim rule implementing PHMAP, requesting comments by May 18, 1992.

The Department has received a number of requests for additional time in which to submit comments on the interim rule. The Department also believes that participation by PHAs in the quarterly cycle of PHMAP review may lead to additional comments, and the Department wishes to solicit as broad a range of comments as possible.

In response to these concerns, the Department is extending, for an additional 60 days, the deadline for submission of comments on the PHMAP interim rule. Comments will now be due on or before Monday, July 20, 1992.

Interested persons are invited to submit an original and three copies of comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable.

Dated: June 2, 1992.

Joseph G. Schiff,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 92–13241 Filed 6–4–92; 8:45 am]

BILLING CODE 4210–33–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 580

Haitian Transactions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule; amendments.

SUMMARY: This rule amends the Haitian Transactions Regulations, 31 CFR part 580 (the "Regulations"), to prohibit entry into any U.S. port, unless otherwise authorized, of any vessel that has called in Haiti since the later of June 5, 1992 or the vessel's last call in the United States (the "reference date"), unless it has demonstrated to the satisfaction of the Department of the Treasury's Office of Foreign Assets Control ("FAC") that all calls in Haiti since the reference date were for transactions (1) exempted or excepted from the prohibitions of the Regulations if engaged in by a U.S. person; or (2) specifically licensed by FAC, or authorized by a member state of the Organization of American States pursuant to MRE/RES. 3–92; or (3) under a contract of voyage that was fully completed prior to the vessel's currently proposed entry into a U.S. port. This provision implements Resolution MRE/RES. 3–92, adopted with respect to Haiti by the Ad Hoc Meeting of Ministers of Foreign Affairs of the Organization of American States on May 17, 1992, if further implementation of Executive Orders 12775 of October 4, 1991, 56 FR 50641, and 12779 of October 28, 1991, 56 FR 55975. The rule also corrects § 580.405 of the Regulations.

EFFECTIVE DATE: This rule is effective on June 5, 1992.

FOR FURTHER INFORMATION CONTACT: John T. Roth, Chief of Policy Planning and Program Management (tel.: 202/622–1604), Steven I. Pinter, Chief of Licensing (tel.: 202/622–2480), or William B. Hoffman, Chief Counsel (tel.: 202/622–2410), Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION: On March 31, 1992, the Department of the Treasury promulgated the Haitian Transactions Regulations in consultation with the Department of State to implement the President's Executive Orders of October 4, 1991, declaring a national emergency with respect to Haiti and ordering specified measures against Haiti, and of October 28, 1991, ordering a trade embargo against Haiti. A new § 580.211 is added which further implements the trade restrictions by requiring that any vessel that has called in Haiti within the requisite period is prohibited from entering a U.S. port unless it has demonstrated to the satisfaction of FAC that certain conditions have been met.

Section 580.211 provides that any vessel that has called in Haiti since the later of June 5, 1992 or the date of the vessel's last call in the United States (the "reference date") is prohibited from entering a U.S. port unless it demonstrates to the satisfaction of FAC that all calls in Haiti since the reference date were for transactions (1) exempted or excepted from the prohibitions of this part if engaged in by a U.S. person; or (2) specifically licensed by FAC, or authorized by a member state of the Organization of American States pursuant to MRE/RES. 3–92; or (3) under a contract of voyage that was fully completed prior to the vessel's currently proposed entry into a U.S. port.

Vessels entering U.S. ports with goods destined for Haiti are fully subject to the export prohibitions of § 580.206 of the Regulations. Exportations to Haiti may be licensed by FAC on a case-by-case basis.

Any vessel subject to § 580.211 which enters a U.S. port without having first demonstrated to the satisfaction of FAC that the required conditions have been met may be subject to civil and criminal penalties.

The final rule also corrects § 580.405 to indicate that payments to the *de facto* regime in Haiti from third-country subsidiaries of U.S. persons will be considered an evasion of the Regulations if such payments, prior to October 4, 1991, had been made by U.S. persons, including their foreign branches, or by Haitian entities owned or controlled by U.S. persons.

Because the Regulations involve a foreign affairs function, Executive Orde

12291 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply.

List of Subjects in 31 CFR Part 580

Administrative practice and procedure, Banking and finance, Blocking of assets, Exports, Haiti, Imports, Penalties, Reporting and recordkeeping requirements, Shipping, Transfer of assets, Vessels.

For the reasons set forth in the preamble, 31 CFR part 580 is amended as follows:

PART 580—HAITIAN TRANSACTIONS REGULATIONS

1. The authority citation for part 580 continues to read as follows:

Authority: 50 U.S.C. 1701, *et seq.*; E.O. 12775, 56 FR 50641 (Oct. 7, 1991); E.O. 12779, 56 FR 55975 (Oct. 30, 1991).

Subpart B—Prohibitions

2. Section 580.211 is added to read as follows:

§ 580.211 Entry of vessels engaged in trade with Haiti.

Except as otherwise authorized, any vessel that has called in Haiti since the later of June 5, 1992 or the vessel's last call in the United States (the "reference date") is prohibited from entering a U.S. port unless it has demonstrated to the satisfaction of the Office of Foreign Assets Control that all calls in Haiti since the reference date were for transactions:

(a) Exempted or excepted from the prohibitions of this part if engaged in by a U.S. person; or

(b) Specifically licensed by the Office of Foreign Assets Control, or authorized by a member state of the Organization of American States pursuant to MRE/RES. 3–92; or

(c) Under a contract of voyage that was fully completed prior to the vessel's currently proposed entry into a U.S. port.

3. Section 580.405 is amended by revising the second and third sentences to read as follows:

§ 580.405 Indirect payments to the de facto regime in Haiti; payments by subsidiaries in third countries.

* * * Unlicensed payments or transfers made to the *de facto* regime in Haiti from U.S. subsidiaries in third countries shall be considered an evasion of the prohibitions set forth in § 580.202 where such payments or transfers prior to that date were normally made by U.S. persons, including their foreign branches, or by persons organized under the laws of Haiti and owned or controlled by U.S. persons. Payments or transfers by third-country subsidiaries of U.S. persons which were routinely made by such subsidiaries prior to October 4, 1991, however, are not prohibited.

Dated: May 29, 1992.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: May 29, 1992.

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 92–13369 Filed 6–3–92; 2:00 pm]

BILLING CODE 4810–25–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD1 92–011]

Empire State Regatta, Albany, NY

AGENCY: Coast Guard, DOT.

ACTION: Implementation rule.

SUMMARY: This document puts into effect the permanent regulations for the Empire State Regatta to begin on Friday, June 12, 1992. The regulations in 33 CFR 100.104 are needed to control vessel traffic within the immediate vicinity of the event due to the confined nature of the waterway and anticipated congestion at the time of the event. The purpose of this regulation is to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATE: The regulations in 33 CFR 100.104 are effective from 12 p.m. on Friday, June 12, 1992 to 7 p.m. on Sunday, June 14, 1992.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) Eric G. Westerberg, Chief, Boating Safety Affairs Branch, First Coast Guard District, (617) 223–8310.

Drafting Information

The principal persons involved in drafting this document are LTJG E.G. Westerberg, Project Manager, First Coast Guard District Boating Safety Division, and LCDR J. Astley, Project Attorney, First Coast Guard District Legal Office.

SUPPLEMENTARY INFORMATION: This notice provides the effective period for the permanent regulation governing the 1992 running of the Empire State Regatta in Albany, New York. A portion of the Hudson River will be closed during the effective period to all vessel traffic except participants, official regatta vessels, and patrol craft. The regulated area is that area between the Interstate Route 90 bridge and the Dunn Memorial bridge in Albany, New York. Further public notification, including the full text of the regulations will be accomplished through advance notice in the First Coast Guard District Local Notice to Mariners. The full text of this regulation is found in 33 CFR 100.104.

Dated: May 26, 1992.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 92–13202 Filed 6–4–92; 8:45 am]

BILLING CODE 4910–14–M

46 CFR Part 401

[CGD 89–104]

RIN 2115–AD47

Great Lakes Pilotage Rates

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard amends the Great Lakes Pilotage regulations by increasing the basic pilotage rates on an interim basis by 14 percent in District 1, 21 percent in District 2, and 10 percent in District 3. These rate adjustments are designed to increase the revenue received by the pilot organizations so as to increase pilot compensation, pending development of a permanent rate methodology.

EFFECTIVE DATE: June 5, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Poyer, Project Manager, Office of Marine Safety, Security and Environmental Protection, (G–MVP/12), room 1210, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, (202) 267–6248.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this rule are: Mr. Scott Poyer, Project Manager, Office of Marine Safety, Security and Environmental Protection, and Mr. Nicholas Grasselli, Project Counsel, Office of Chief Counsel.

Regulatory History

On December 6, 1991, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled Great Lakes

Pilotage Rates in the **Federal Register** (56 FR 63911). The Coast Guard received 15 letters commenting on the proposal. A public hearing was not requested and one was not held.

Background and Purpose

The last rate increase for District 2 was in April 1985 (50 FR 7177), and the last rate increase for Districts 1 and 3 was in May 1987 (52 FR 11468). Since the last rate increases a 1988 Department of Transportation (DOT) Pilotage Study and a December 14, 1990 DOT Inspector General's (IG) Audit Report revealed weaknesses in accounting for the expenses incurred by the pilotage associations and the need to formally establish the factors considered in establishing pilotage rates.

On April 25, 1990, the Coast Guard published a final rule (55 FR 17580) establishing improved audit requirements and the guidelines and procedures to be followed in ratemaking. The Coast Guard is developing standardized procedures for evaluating future pilotage rate adjustment requests, and expects that it could take up to a year to revise the pilotage ratemaking methodology.

The Coast Guard has determined that an interim increase in the pilotage rates is necessary because actual pilot compensation is below present target levels.

Title 46 U.S.C. 9305 provides that the Secretary of Transportation, subject to the concurrence of the Secretary of State, "* * * may make agreements with the appropriate agency of Canada to * * * prescribe joint or identical rates and charges * * *." The latest Memorandum of Arrangements between Canada and the United States specifies that "[t]he Secretary [of Transportation] and the Minister [of Transport] will arrange for the establishment of regulations imposing identical rates * * *." Consequently, both U.S. and Canadian pilotage rates were nominally identical until 1986. Uniform rates are required by the agreement with Canada. Uniform rates are also important from the standpoint of predictable costs for vessels requiring pilotage. However, there are differences in the cost bases and in the operating organizations of the U.S. and Canadian pilots, particularly with regard to pilot compensation. These differences, as well as the need for U.S. and Canadian uniformity, will be taken into account when revising the pilotage ratemaking methodology.

The intent of this final rule is to assure that this rate adjustment will result in increased compensation for the pilots. Accordingly, the Coast Guard expects the pilot associations to make every effort to ensure that the rate increases will be used to increase pilot compensation. Because the shipping season has already commenced, the Coast Guard finds good cause to make this rule effective upon publication in accordance with 5 U.S.C. 553(d).

Discussion of Comments and Changes

A total of 15 written comments were received. Many of the comments addressed not only the increase in the basic pilotage rates, but also pilotage in general. While information on pilotage in general is appreciated, this section discusses only those comments dealing with the ratemaking and the changes to the NPRM of December 6, 1991.

Three comments addressed the NPRM's calculation of expenses for District 1. Review of these comments revealed that three categories of expenses were inadvertently omitted from the District 1 total expense figure contained in that NPRM. These expenses included Federal Insurance Contribution Act (FICA) taxes, Workmen's Compensation coverage, and some travel expenses. These pilotage expenses for District 1 are incurred by the pilots individually rather than by the pilotage Association in District 1, and are not reflected in the Association's financial records in District 1. Therefore, these expenses were inadvertently omitted from the calculations. A detailed examination of these omitted expenses showed that the total of omitted expenses is $85,097. This total consists of $23,803 for FICA expenses, $12,294 for locally available Workmen's Compensation coverage, and $49,000 for travel expenses that were individually paid. As a result, the total of $85,097 was added to the operating expenses taken from the 1989 United States Coast Guard (USCG) audit of the St. Lawrence Seaway Pilots Association of $504,708, minus the expenses found to be unreasonable/unsupported in the 1989 DOT IG audit of $59,622. This results in total estimated operating expenses of $530,183, rather than the $470,770 contained in the NPRM of December 6, 1991. Making this change results in an increase of 14% in the basic pilotage rates for District 1, instead of 9% as originally put forth in the NPRM of December 6, 1991.

Five comments questioned the calculations of allowable expenses used in the ratemaking. There comments indicated that more expenses should be allowed. Two comments indicated that fewer expenses should be allowed, and the current oversight of expenses should be considerably more strict. This subject will be thoroughly considered during the upcoming review of the ratemaking methodology. Further comments on this subject will be sought at that time. However, for the purposes of this interim rate increase, the Coast Guard considers the allowed expenses to be reasonable.

Six comments questioned the method in which pilot compensation is targeted to equal the average compensation received by masters and chief mates on U.S. Great Lakes vessels. Each comment that offered an alternative offered a different alternative for new targets or redesignation of current targets. This subject has been the topic of numerous studies, most recently the Great Lakes Pilotage Study Final Report of December 7, 1988 by the U.S. Department of Transportation (DOT). This study concluded that the present pilot compensation targets are appropriate.

Two comments questioned the definitions of designated and undesignated waters used in the NPRM of December 6, 1991. These definitions were established by Presidential Proclamation No. 3385, June 10, 1968, 33 FR 8535, and are not subject to Coast Guard interpretation.

Four comments expressed dissatisfaction with the method of the current ratemaking procedure. These comments will be considered in the upcoming review of the ratemaking procedures. However, as written in the NPRM of December 6, 1991, the rate increases contained in this rule are meant as an interim measure until a new ratemaking procedure is developed.

Fifteen comments addressed the amount of the rate increase. Seven comments said the increase was too low. Two comments said the increase was too high. Two comments supported the rate increase. Four comments did not oppose the rate increase. Given this wide disparity of opinion between those who pay pilotage fees and those who receive pilotage fees, the Coast Guard considers the interim rate increase to be fair to all parties involved.

Three comments questioned the methods that are used to calculate the number of pilots that should be employed in each District. One comment was that too many bridge hours are required for River pilots, and two comments indicated that the calculations did not take into account surges in traffic, illness, rest periods, and other factors which would require more pilots. The method used to calculate the number of pilots for ratemaking purposes was considered in detail in the DOT Great Lakes Pilotage Study Final Report, published December 7, 1988. That study concluded that the pilot workload standard of 1000 hours

per pilot per season for designated waters was appropriate, and that the pilot workload standard for undesignated waters be reduced by 200 to 1800 bridge hours per pilot per season. In this rulemaking, the Coast Guard used 1000 hours for designated waters and 1800 hours for undesignated waters.

Four comments addressed the timing of the rate increase and the length of the comment period on the NPRM of December 6, 1991. Two comments requested that the comment period be lengthened or the rate increase be delayed. Two comments requested that this rate increase, and the process for future rate adjustments, be accelerated. In light of the length of time since the previous rate increases, and the steadily decreasing compensation received by most pilots, the Coast Guard believes that further delay in this interim increase would not serve the interests of the maritime community of the Great Lakes.

Two comments suggested that District 1 should be divided into separate Lake and River Districts, rate increases should be separate for each area, or Lake Pilots should be fully registered. These comments will be considered in the upcoming review of the rulemaking process. However, as written in the NPRM of December 6, 1991, the rate increases contained in this rule are meant as an interim measure until a new ratemaking procedure is developed.

Regulatory Evaluation

This final rule is not considered to be major under Executive Order 12291, but is significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040, February 26, 1979). Therefore, the Coast Guard has determined that a Regulatory Impact Analysis under Executive Order 12291 is not required. Furthermore, because the Coast Guard expects the regulatory impact of this final rule to be minimal, a separate draft Regulatory Evaluation has not been prepared. The primary impact of this rate adjustment will be in 1992. Since the pilotage fees represent only about 3% of total shipping costs, this would result in an approximate one-half percent increase in total shipping costs, which should not have a significant impact on Great Lakes shipping.

Small Entities

As discussed above, the Coast Guard expects the impact of this rule to be minimal. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significnt economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 12612, and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This final rule increases the Great Lakes basic pilotage rates on an interim basis pending development of a new ratemaking methodology. The authority to regulate concerning Great Lakes pilotage rates is delegated to the Coast Guard by the Secretary of Transportation, whose authority is committed by statute. Furthermore, since vessel traffic in the Great Lakes tends to move between U.S. ports in the national marketplace, pilotage regulations for the Great Lakes is a matter for which regulations should be of national scope to avoid unreasonably burdensome variances. Therefore, by adopting this final rule, the Coast Guard is preempting State action addressing the same subject matter.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that under section 2.B.2. of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. This action is an administrative action solely involving the fees charged for existing services and clearly has no environmental impact.

List of Subjects in 46 CFR Part 401

Administrative practice and procedures, Great Lakes, Navigation (water), Penalties, Reporting and recordkeeping requirements, Seamen.

PART 401—[AMENDED]

For the reasons set out in the preamble, the Coast Guard amends part 401 of title 46 of the Code of Federal Regulations as follows.

1. The authority citation for part 401 continues to read as follows:

Authority: 46 U.S.C. 6101, 7701, 8105, 9303, 9304; 49 CFR 1.45, 1.46; section 401.105 also issued under the authority of 44 U.S.C. 3507.

2. Section 401.405 is revised to read as follows:

§ 401.405 Basic rates and charges on designated waters.

Except as provided in § 401.420, the following basic rates are payable for all services and assignments performed by U.S. registered pilots in the areas described in § 401.300.

(a) *District 1:*

(1) For passage through the District or any part thereof, $11.76 for each statute mile, plus $157 for each lock transited, but with a minimum basic rate of $343 and a maximum basic rate for a through trip of $1,507.

(2) For a movage in any harbor, $516.

(b) *District 2:*

(1) Southeast Shoal to Toledo or any point on Lake Erie west of Southeast Shoal, $754.

(2) Between points on Lake Erie west of Southeast Shoal, $445.

(3) Southeast Shoal to Port Huron Change Point or any point on the St. Clair River when pilots are not changed to the Detroit Pilot Boat, $1,313.

(4) Southeast Shoal to Detroit/Windsor or any point on the Detroit River, $754.

(5) Southeast Shoal to the Detroit Pilot Boat, $546.

(6) Toledo or any point on Lake Erie west of Southeast Shoal to the Port Huron Change Point, when pilots are not changed at the Detroit Pilot Boat, $1,521.

(7) Toledo or any point on Lake Erie west of Southeast Shoal to Detroit/Windsor or any point on the Detroit River, $979.

(8) Toledo or any point on Lake Erie west of Southeast Shoal to the Detroit Pilot Boat, $754.

(9) Detroit/Windsor to any point on the Detroit River and between points on the Detroit River, $445.

(10) Detroit/Windsor or any point on the Detroit River to the Port Huron Change Point or any point on the St. Clair River, $987.

(11) Detroit Pilot Boat to any point on the St. Clair River, $987.

(12) Detroit Pilot Boat to Port Huron Change Point, $767.

(13) Between points on the St. Clair River, $445.

(14) Port Huron Change Point to any point on the St. Clair River, $546.

(c) *District 3:*

(1) Between the southerly limit of the district and the northerly limit of the district or the Algoma Steel Corporation Wharf at Sault Ste. Marie, Ontario, $1,242.

(2) Between the southerly limit of the District and Sault Ste. Marie, Ontario or any point in Sault Ste. Marie, Ontario other than the Algoma Steel Corporation Wharf, $1,042.

(3) Between the northerly limit of the District and Sault Ste. Marie, Ontario, including the Algoma Steel Corporation Wharf, or Sault Ste. Marie, Michigan, $468.

(4) For a movage in any harbor, $468.

3. Section § 401.410 is revised to read as follows:

§ 401.410 Basic rates and charges on undesignated waters.

(a) Except as provided in § 401.420 and subject to paragraph (c) of this section, the basic rates for each 6 hour period or part thereof that a U.S. pilot is on board a ship in the undesignated waters are:

(1) In Lake Ontario, $277.

(2) In Lake Erie, $322.

(3) In Lakes Huron, Michigan, and Superior, $251.

(b) Each time a U.S. pilot performs the docking or undocking of a ship in undesignated waters there is an additional charge of:

(1) In District 1, $264.

(2) In District 2, $248.

(3) In District 3, $239.

(c) For assignments performed by U.S. pilots between Buffalo and any point on the Niagara River below the Black Rock Lock, the basic rate payable is, $633.

4. Section 401.420 is revised to read as follows:

§ 401.420 Cancellation, delay or interruption in rendition of services.

(a) Except as provided in this paragraph, whenever the passage of a ship is interrupted and the services of a U.S. pilot are retained during the period of the interruption or when a U.S. pilot is detained on board a ship after the end of an assignment for the convenience of the ship, the ship shall pay an additional charge calculated on a basic rate of $46 for each hour or part of an hour during which each interruption or detention lasts with a maximum basic rate of $727 for each continuous 24 hour period during which the interruption or detention continues. There is no charge for an interruption or detention caused by ice, weather or traffic, except during the period beginning the 1st of December and ending on the 8th of the following April. No charge may be made for an interruption or detention if the total interruption or detention ends during the 6 hour period for which a charge has been made under § 401.410.

(b) When the departure or movage of a ship for which a U.S. pilot has been ordered is delayed for the convenience of the ship for more than one hour after the U.S. pilot reports for duty at the designated boarding point or after the time for which the pilot is ordered, whichever is later, the ship shall pay an additional charge calculated on a basic rate of $46 for each hour or part of an hour including the first hour of the delay, with a maximum basic rate of $727 for each continuous 24 hour period of the delay.

(c) When a U.S. pilot reports for duty as ordered and the order is cancelled, the ship shall pay:

(1) A cancellation charge calculated on a basic rate of $275;

(2) A charge for reasonable travel expenses if the cancellation occurs after the pilot has commenced travel; and

(3) If the cancellation is more than one hour after the pilot reports for duty at the designated boarding point or after the time for which the pilot is ordered, whichever is later, a charge calculated on a basic rate of $46 for each hour or part of an hour including the first hour, with a maximum basic rate of $727 for each 24 hour period.

5. Section 401.428 is revised to read as follows:

§ 401.428 Basic rates and charges for carrying a U.S. pilot beyond normal change point or for boarding at other than the normal boarding point.

If a U.S. pilot is carried beyond the normal change point or is unable to board at the normal boarding point, the ship shall pay at the rate of $281 per day or part thereof, plus reasonable travel expenses to or from the pilot's base. These charges are not applicable if the ship utilizes the services of the pilot beyond the normal change point and the ship is billed for these services. The change points to which this section applies are designated in § 401.450.

Dated: June 2, 1992.

Martin H. Daniell,

Vice Admiral, U.S. Coast Guard Acting Commandant.

[FR Doc. 92-13330 Filed 6-3-92; 12:27 pm]

BILLING CODE 4910-14-M

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 87-10; Notice 5]

RIN 2127-AE14

Federal Motor Vehicle Safety Standards; Power-Operated Window, Partition, and Roof Panel Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: In response to petitions for reconsideration of a final rule published in the **Federal Register** (56 FR 15290) on April 16, 1991, this final rule amends Federal Motor Vehicle Safety Standard No. 118, *Power-operated window, partition, and roof panel systems.* The final rule provides additional flexibility to manufacturers, clarifies the requirements, and delays by one year the effective date for the extension of the Standard to cover power-operated roof panels.

DATES: *Effective Date:* The changes made in this rule are effective September 1, 1992. Vehicles manufactured before September 1, 1992 may comply with the changes made in this rule.

Petitions for Reconsideration: Any petitions for reconsideration of this rule must be received by NHTSA no later than July 6, 1992.

ADDRESSES: Petitions for reconsideration must refer to the docket and notice numbers set forth at the beginning of this notice and be submitted to the following: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday. It is requested, but not required, that 10 copies of the petition be submitted.

FOR FURTHER INFORMATION CONTACT: Mr. Patrick Boyd, Office of Vehicle Safety Standards, NRM-11, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Mr. Boyd's telephone number is (202) 366-6346.

SUPPLEMENTARY INFORMATION:

Background

At present, Standard No. 118 is titled *Power-operated window systems* (49 CFR 571.118). The purpose of the standard is to minimize the risk of personal injury that may result if a person is caught between a closing power-operated window and the window frame. The agency's experience is that children are the group of people most likely at risk from inadvertent or unsupervised operation of power windows.

On April 6, 1990, the agency published in the **Federal Register** (55 FR 12871) a notice of proposed rulemaking (NPRM) to amend Standard No. 118. Among other things, the agency proposed to: extend the standard's coverage to apply to power operated roof panel systems, add force requirements for key-activated systems located on the exterior of the vehicle, and permit non-key locking systems on the vehicle exterior and remote control systems.

On April 16, 1991, the agency published in the **Federal Register** (56 FR 15290) a final rule amending the standard. The standard's requirements were extended to cover power-operated roof panels. It had previously applied only to power windows and power partition systems. A new requirement was established for key-activated power window/partition/roof panel control systems located on the vehicle exterior. Such systems, which previously had been permitted, were now required to either have an operating control that must be continuously activated by the user, or to have an automatic reversal mechanism that reverses window/partition/roof panel direction upon the window/partition/roof panel meeting an obstruction while closing. The final rule also newly permitted non-key locking systems on the exterior of the vehicle, which were required to meet the same requirements as key-activated systems located on the vehicle exterior. Finally, the final rule newly permitted remote control devices for power window/partition operation. Such devices were required to either be incapable of operating from a distance of more than 20 feet from the vehicle, or to have an automatic reversal mechanism. The same requirements were established for remote control devices for power roof panel operation.

In response to the final rule, the agency received three timely petitions for reconsideration, from Prospects Corporation, the Rover Group, Ltd. and the Association of International Automobile Manufacturers (AIAM). NHTSA also received submissions from the International Sunroof Institute (ISI) and General Motors Corporation (GM). The latter two submitters each apparently considered its document to be a petition for reconsideration. However, because the documents were submitted after the filing deadline established in 49 CFR 533.35, the agency is treating them as petitions for rulemaking (See 49 CFR part 552).

In responding to the petitions for reconsideration, the agency has, however, been able to address the issues raised in the petitions for rulemaking, since the late petitions raised issues related to those presented in the petitions for reconsideration. Therefore, this notice responds to both the petitions for reconsideration and the petitions for rulemaking.

The agency now turns to addressing the issues raised by the petitioners.

Automatic Reversal Safety Feature

Standard No. 118, as amended in the April 1991 final rule, permits power window/partition/roof panel systems to be closed only under specified circumstances. As indicated above, one option manufacturers may select for power control systems on the exterior of the vehicle and remote control systems is to provide an automatic reversal mechanism that reverses window/partition/roof panel direction upon the window/partition/roof panel meeting an obstruction while closing. The regulatory text related to this option, as set forth in the April 1991 final rule, reads as follows:

S5.(a) Notwithstanding S4, power window, partition or roof panel systems which, while closing, reverse direction when they meet a resistive force of 22 pounds or more from a solid cylinder of 4 to 200 mm in diameter and open to at least 200 mm, may close:

(1) Upon the one-time activation of a locking system on the exterior of the vehicle,

(2) Upon the one-time activation of any remote actuation device, or

(3) Upon continuous activation of any remote actuation device capable of closing the power window, partition or roof panel from a distance of more than 20 feet from the vehicle.

(b) The 4 to 200 mm dimension cited in S5(a) is measured from the window or panel's leading edge to the daylight opening.

1. Circumstances For Closing When Reversal Feature is Provided

Petitions submitted by Prospects and GM argue that the permissible circumstances for the closing of a window, partition or roof panel with a reversal feature are overly narrow. Prospects requested that the standard permit the closing of windows equipped with its "intelligent control system." With this system, drivers could leave windows open about an inch when they leave their vehicles. The windows would shut automatically if the system detects rain falling. Prospects stated that section S5(a)(1)'s reference to one-time activation of the vehicle locking system could be interpreted as prohibiting an automatic power window system from continuously responding to signals to close (if rain should fall intermittently), in the event the window or sunroof does not actually close. GM noted that in the April 1991 final rule, S4 pertains to supervised power window closing and S5 pertains to unsupervised power window closing. GM requested that the final rule be amended to remove the specified circumstances when power windows with an automatic reversing safety feature are permitted to close.

Upon reconsideration, the agency has decided not to restrict closing of power-operated window, partition and roof panel systems which include an automatic reverse feature. NHTSA believes that the safety concerns ordinarily associated with unsupervised window closing modes do not exist if an automatic reverse feature is provided. Even if a child places his or her fingers, arms or head in the path of a such a closing window, the automatic reversal feature would prevent serious injuries. The April 1991 final rule permitted certain specified unsupervised window closing modes if an automatic reversal feature was provided. However, as evidence by the petitions for reconsideration, manufacturers would like to provide a number of other unsupervised window closing modes. Upon review, the agency does not see any safety reason why, if an automatic reversal feature is provided, some unsupervised window closing modes should be permitted but not other modes. Accordingly, in response to the petitions for reconsideration, NHTSA is amending S5(a) of Standard No. 118 to remove restrictions on the circumstances under which closing is permitted for systems equipped with an automatic reversal feature.

2. Size of Opening to Which System Must Reverse

In order for manufacturers to take advantage of compliance options provided for systems equipped with a reversal feature, they must ensure their reverse mechanisms meet specified criteria. One criterion of the April 1991 final rule was that, upon reversal, a power window/partition/roof panel must open to "at least 200 mm." Three petitioners, Prospects, Rover and ISI, raised the issue of how that requirement could be met if the maximum size of the opening was less than 200 mm. As an example of a system that may be unable to comply with such a requirement, Rover noted that pop-up sunroofs typically have a maximum opening of 100 mm.

Prospects stated a concern about opening to 200 mm because of security considerations. As previously noted, Prospects' "intelligent control system" permits windows to be open about an inch but automatically shuts the windows if the system detects rain falling. Prospects stated that a design which caused the windows to open to 200 mm upon meeting an obstacle while closing would compromise the vehicle's security, since a 200 mm opening would be large enough to permit a person to gain access to the vehicle interior. It recommended amending the language of S5(a) to require opening "to at least the same original position prior to the automatic closing." The petitioner argued that if a person's fingers, arms or head could be moved into an open window or sunroof area prior to the

automatic closing, they could be moved out of the same area when the window glass or roof panel is reopened to the same position.

The agency agrees with petitioners that the size of the opening upon reversal should be reconsidered. Both issues that were raised, the impossibility of complying with the 200 mm requirement for some power-operated systems, and security considerations, are valid. Therefore, in the final rule, the agency retains the opening to 200 mm criterion as one alternative and adopts language similar to that proposed by Prospects as another alternative. The agency agrees with Prospects' argument that opening to the position prior to initiation of closing would meet the need for safety in this area. However, the agency believes that adopting only the language proposed by Prospects would be too restrictive, since it would require windows and panels that were initially open further than 200 mm to return automatically to that position. Therefore, the amendments make the criteria less restrictive than the language adopted in the April 1991 final rule.

3. Resistive Force Specification

Another criterion specified in the April 1991 final rule for reversal mechanisms is that such systems must reverse direction "when they meet a resistive force of 22 pounds or more from a solid cylinder of 4 to 200 mm in diameter."

Prospects stated that this wording may mean that windows must reverse at the actual moment of contact. Prospects expressed its concern that only systems that use force sensoring to control reversing would be practical for unsupervised or automatic closing. If this were the case, Prospects believes that systems with proximity sensors to detect exposed fingers, which reverse the window before actual contact (avoiding resistive force in the solid cylinder test), would not be permitted.

NHTSA notes that the purpose of the resistive force specification is to ensure that reversal takes place before a level of force occurs that causes injury. Thus, reversal before contact would obviously meet this safety concern. Since the wording of the April 1991 amendment appears to contemplate that reversal takes place after contact, the agency is revising the language to make it clear that reversal may take place before contact occurs.

ISI requested a review of the resistive force specification as applied to power operated sunroof panels. ISI stated that because sunroof panels are equipped with edge frames two or three times the thickness of glass, sunroofs should be allowed a higher resistive based on the lower contact pressure (force per unit area) that occurs with sunroofs as compared to windows.

NHTSA does not agree with ISI's argument that sunroof panels should be permitted a higher force limit simply because they result in lower contact pressure than windows. Standard No. 118's focus on force resulted from the agency's review of an investigation conducted by the University of Heidelberg for the Kraftfahrt-Bundesmat, the German governmental body responsible for type approval of automotive equipment. The university study concluded that 10 kg (22 pounds) is sufficient to strangle an infant whose neck is caught face down between the window edge and the door frame. NHTSA believes that force is a better predictor of the risk of strangulation and bone breakage than pressure. While a pressure specification might be better than force for predicting cutting injuries, window/partition/roof panel edges are sufficiently blunt that cutting injuries are not a significant safety concern.

NHTSA notes that, consistent with its policy of using metric measurements where feasible, the agency is revising the force limit from 22 pounds to 100 newtons (22.48 pounds). The revised force limit is identical to that in the German Road Traffic Act, which was the original source for the limit.

4. Test Procedure

In specifying that reversal systems must reverse direction "when they meet a resistive force of 22 pounds or more from a solid cylinder of 4 to 200 mm in diameter," the April 1991 final rule provided that the 4 to 200 mm dimension "is measured from the window or panel's leading edge to the daylight opening."

ISI stated that a standardized means or method for the measurement of the reversing pressure should be established. That organization argued that varying measurement methods will otherwise give varying and likely non-conforming and non-comparable results.

Some petitioners argued that further clarification is needed for the term "daylight opening." Rover noted that in the April 1991 final rule, NHTSA had adopted GM's recommendation that the window opening zone be measured between the top edge of the glass and the daylight opening. Rover stated its belief that for a window, the measurement would be the top edge, as "this would be the part which is usually substantially horizontal." However, Rover stated that in the case of a pop-up sun roof, "there is no clear 'leading edge.' " In order to clarify this point, Rover provided recommended language to amend S5.(b) so that the force is measured at a point "from the centerline of the maximum width of the panel or window to the daylight opening."

ISI requested a clarification of "daylight opening" with respect to sunroofs. That petitioner noted that the opening for sunroofs is stepped, causing the outer opening to be somewhat larger than the inner opening. It stated that the inner opening should be of primary concern, as that is the point at which body parts of vehicle occupants would first make contact.

NHTSA agrees that clarification is necessary since the language the agency cited as rationale for the wording of the final rule addresses only sliding windows and partitions, not hinged windows, roof panels, or partitions that pop up or pop out. Moreover, there appears to be some ambiguity even in how forces in side windows that slide up and down are to be measured.

The agency believes, however, that the basic requirement is relatively straightforward and that a detailed test procedure is unnecessary. In essence, when a rod from 4 mm to 200 mm in diameter (representing a finger, arm or head) is placed through the opening of a closing power window/partition/roof panel, the window/partition/roof panel must reverse direction without exerting a force on the rod exceeding a specified maximum.

NHTSA believes that the following language will clarify the requirements:

S5(a) Notwithstanding S4, a power operated window, partition or roof panel system may close if it is capable of meeting the following requirements—

(1) while closing, the window, partition or roof panel system reverses direction before contacting, or before exerting a force of 100 newtons or more on, any rigid circular cylindrical rod from 4 mm to 200 mm in diameter (but not exceeding the size of the opening at the test location) that is placed through the window, partition or roof panel system opening at any location in the manner described in S5(b), and

(2) upon such reversal, opens to either a position that permits a rigid circular cylindrical rod that is 200 mm in diameter to be placed through the opening at the same contact point(s) as the rod described in (1), or to a position that is at least as open as the position at the time closing was initiated.

S5(b) The test rod is placed through the window, partition or roof panel opening from the inside of the vehicle such that the cylindrical surface of the rod contacts any part of the structure with which the window, partition or roof panel mates. Typical placements of test rods are illustrated in Figure 1.

While the agency believes that this regulatory text is clear, it is including

Figure 1 in the standard to depict typical placement of test rods for sunroofs and windows.

NHTSA notes that the zone where reversal must take place is determined by the 4 mm to 200 mm test rods, since the cylindrical surface of the test rod contacts the structure with which the window, partition or roof panel mates. A 200 mm test rod similarly determines the amount by which a window/partition/roof panel must open (if it opens to a position less open than when closing was initiated). With this regulatory approach, it is no longer necessary to use or define the term "daylight opening."

In order to meet the requirement, reversal must take place when a window/partition/roof panel is closing and any 4 mm to 200 mm test rod is placed through any part of the aperture. The agency does not accept a suggestion by Rover that force be measured at a single point. Depending on the shape of a window/partition/roof panel and surrounding structure, the force at one point might be less than 22 pounds and the force at another point several times 22 pounds. For a hinged sunroof, for example, the force at points close to the hinges would likely be much higher than the force at points farthest from the hinges. Thus, Rover's suggested amendment would not ensure that windows/partitions/roof panels reverse before imposing forces that could cause serious injury to the fingers of small children.

With respect to ISI's statement that the inner opening of a stepped sunroof should be of primary concern, since it is the point at which body parts of vehicle occupants would first make contact, NHTSA notes that the placement of a test rod through a window/partition/roof panel opening from the inside of a vehicle closely simulates placing a finger or arm through the opening. The forces that are imposed on the test rod are thus the same ones that would be imposed on a finger or arm. Accordingly, the test procedure ensures that reversal occurs before inappropriate force is imposed on fingers or arms, whether at the inner opening of a stepped sunroof or at other vehicle parts.

Since the placement of test rods and measurement of force on a test rod are straightforward, NHTSA does not see any need to define a special test procedure.

Remote Actuation Devices

The April 1991 final rule newly permitted remote actuation devices for power-operated window and partition systems. The requirements that were established in this area were also applied to power roof panel systems. Such devices were required either to be incapable of operating from a distance of more than 20 feet from the vehicle, or to have an automatic reversal mechanism.

AIAM requested a review of the 20 foot limitation. That petitioner argued that "RF"-type remote controls cannot be limited to 20 feet and that there is a question whether an infra-red device can reliably be limited to that distance. AIAM stated that it did not know of any data that would indicate that 20 feet is safe and 30 or 40 not.

NHTSA notes that it initially proposed to permit remote closing systems only if an automatic reversal mechanism was provided. However, the agency was persuaded by commenters that vehicles using a line-of-sight remote control need not be required to have the automatic reversal feature. The agency concluded that a line-of-sight system with a 20 foot range would provide adequate safeguards against injury, because the person operating the remote control would be close enough to the vehicle that he or she would be able to see whether there were any children near a closing window/partition/roof panel. NHTSA stated that it believed that a 20 foot range would provide adequate convenience while still ensuring that the operator of the remote control device remained close to the vehicle. 56 FR 15294. The agency notes that while it contemplated that line-of-sight remote control devices would be used under this option, the regulatory language did not specify that remote control devices be line-of-sight devices.

Upon reconsideration, to permit flexibility, NHTSA has decided that a longer operating distance of 35 feet (11 meters) should be permitted so long as operation of the device is limited to line-to-sight. The agency believes that the operators of remote control devices can see whether children are in the vicinity of the vehicle from 35 feet so long as their vision is unobstructed. The 20 foot limitation will be maintained for non-line-of-sight devices. In keeping with the agency's policy of specifying metric measurements whenever possible, the final rule adopts a limitation of 11 meters. The final rule also amends the 20 foot limitation for non-line-of-sight operation by converting it into a metric measurement of 6 meters.

In its petition for reconsideration, AIAM took issue with NHTSA's position, set forth in the April 1991 final rule, that remote actuation devices for power operated window and partition systems were precluded by Standard No. 118 prior to that final rule. AIAM stated that "such systems are now in use" and are used to remotely operate power windows, sunroofs, doorlocks and antitheft systems. AIAM asked for a one year delay in the effective date, since, according to that organization, several manufacturers cannot provide an automatic reversal mechanism or limit operation to 20 feet by the September 1992 effective date.

The interpretation issue raised by AIAM was specifically addressed by NHTSA in the April 1991 final rule, in response to comments, and AIAM has not provided any new arguments indicating that the agency's position is incorrect. Therefore, NHTSA is not revisiting that issue. To the extent that remote actuation devices for power operated window and partition systems are currently being sold that are inconsistent with the requirements of the April 1991 final rule and today's amendments, NHTSA will address them in the context of enforcement proceedings. As discussed below, however, NHTSA has decided to delay by one year the effective date for the extension of Standard No. 118's requirements to roof panel systems, to ensure that there is adequate leadtime for manufacturers to meet the requirements for those devices.

Closing From Positions Less Than 4 mm Open

As discussed above, power windows/partitions/roof panels are generally permitted to close if they reverse direction within a zone defined by 4 mm to 200 mm test rods placed through the opening such that the longitudinal edge of the test rod contacts the structure with which the window/partition/roof panel mates. Thus, such reversal is not required for the closing of a window that was open less than 4 mm before it started closing.

GM stated that it has been investigating the use of partially lowered windows as a means of facilitating door closing by reducing interior compartment air pressure during door closing. GM's system would cause all of the power windows to lower slightly when the first door was opened, and would cause all power windows to close automatically when the last door was closed. GM stated its belief that this system would be permitted if the windows were lowered less than 4 mm, but requested that Standard No. 118 be amended to specifically permit it.

The April 1991 final rule was concerned about closing of power windows, partitions, and sunroofs within the range of 4 mm to 200 mm from the frame. The agency believed it was within this range that fingers, and other

body parts of children would be at risk of being caught. NHTSA did not apply the reversal requirement to windows opened less than 4 mm prior to closing as it believed such openings are too small to pose a likely danger and because unnecessary automatic reversal could result from a window's misalignment or obstruction by ice. Since GM's system involves openings of a size the agency did not believe posed a safety risk, the agency agrees that the system should be permitted.

Since it is not clear that GM's system is permitted under the April 1991 final rule, the agency is amending the standard to indicate that it permits automatic closing of power windows/partitions/roof panels which are open less than 4 mm (at all locations around their perimeter).

Closing Between Turning Off Ignition Key and Opening Door

One of the specified circumstances for which the April 1991 final rule permits power-operated windows/partitions/roof panels to close, without meeting any other requirements, is during the interval between the time the ignition key is turned off and the time one of the front vehicle doors is opened. ISI stated that some power-operated sunroofs are designed to close automatically when the ignition is turned off. That organization expressed concern that this closing mode may not be permitted under the April 1991 final rule since the sunroof may take longer to close than the time required for the driver to open the door. ISI therefore requested that consideration be given to "a time relief" for sunroof panels, with possibly inclusion of a specific reversing pressure limit.

NHTSA notes that the provision permitting closing during the interval between the time the ignition is turned off and one of the front vehicle doors is opened has long applied to power windows and partitions. However, this provision, like a similar one permitting closing when the ignition key is in the "on," "start," or "accessory" provision did not contemplate "automatic" closing of power windows/partitions. Instead, the provisions were intended to limit the times when typical power window controls were permitted to be operable. While the standard does not prohibit automatic operation during these times, the agency notes that "automatic" closing of power windows/partitions/roof panels (within the range of 4 mm to 200 mm from the frame) raises different safety issues than intentional closing by typical power controls. For example, before and during intentional closing of a window, an adult is likely to check whether a child has his or her arms or fingers in a window opening. If a window closes automatically, however, a supervising adult may be taken by surprise and have difficulty reacting immediately if a child should have his or her fingers in the opening.

As discussed above, automatic closing of sunroofs is permitted, regardless of timing, if a reversal feature is provided. Thus, the closing mode cited by ISI could be provided for a sunroof design if a reversal feature was also included. Moreover, as indicated above, NHTSA has decided to delay by one year the effective date for the extension of Standard No. 118's requirements to roof panel systems, to ensure that there is adequate leadtime for manufacturers to meet the requirements for those devices.

Retitling Standard No. 118

In its petition for reconsideration, AIAM suggested that it would be appropriate to amend the title of the standard to reflect its expanded applicability. The agency concurs with this recommendation. Accordingly, Standard No. 118 is now retitled as "Power-operated window, partition and roof panel systems."

Effective Dates

The changes made in this rule are effective September 1, 1992. Vehicles manufactured before September 1, 1992 may comply with the changes made in this rule. The standard's requirements for power-operated roof panel systems need not be met for vehicles manufactured before September 1, 1993.

Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Rulemaking Analyses and Notices

1. Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The agency has considered the costs and other impacts of this rule and determined that the rule is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation's regulatory procedures. This rule does not impose new requirements but instead, in response to petitions for reconsideration of a final rule published in April 1991, provides additional flexibility to manufacturers, clarifies the requirements, and delays by one year the effective date for the extension of the Standard to power-operated roof panels. Therefore, neither a regulatory impact analysis nor a full regulatory evaluation is required.

2. Regulatory Flexibility Act

NHTSA has analyzed the effects of this final rule on small entities in accordance with the Regulatory Flexibility Act. Based on that analysis, I hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities. As indicated above, this rule does not impose new requirements but instead provides additional flexibility to manufacturers, clarifies existing requirements, and delays by one year the effective date for the extension of the Standard to cover power-operated roof panels. Accordingly, no final regulatory flexibility analysis has been prepared.

3. Executive Order 12612 (Federalism)

This rule has been analyzed in accordance with the principles and requirements contained in Executive Order 12612, and the agency has determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

4. National Environmental Policy Act

The agency has considered the environmental implications of this rule in accordance with the National Environmental Policy Act of 1969 and has determined that it will not significantly affect the quality of the human environment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR part 571 is amended to read as follows:

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1391, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.118 [Amended]

Section 571.118 is amended to read as follows:

2. The heading of § 571.118 is revised to read as follows:

§ 571.118 Standard No. 118; Power-operated window, partition, and roof panel systems.

3. S2 is revised to read as follows:

* * * * *

This standard applies to passenger cars, multipurpose passenger vehicles, and trucks with a gross vehicle weight rating of 10,000 pounds or less. The standard's requirements for power-operated roof panel systems need not be met for vehicles manufactured before September 1, 1993.

* * * * *

4. S4 is amended by revising paragraph (d) and adding paragraphs (f) and (g) as follows:

* * * * *

(d) Upon continuous activation of a remote actuation device, provided that the remote actuation device shall be incapable of closing the power window, partition or roof panel from a distance of more than 6 meters from the vehicle;

* * * * *

(f) If the window, partition, or roof panel is in a static position before starting to close and in that position creates an opening so small that a rigid circular cylindrical rod that is 4 mm in diameter cannot be placed through the opening at any location around its edge in the manner described in S5(b).

(g) Upon continuous activation of a remote actuation device, provided that the remote actuation device shall be incapable of closing the power window, partition or roof panel if the device and the vehicle are separated by an opaque surface and provided that the remote actuation device shall be incapable of closing the power window, partition or roof panel from a distance of more than 11 meters from the vehicle.

5. S5 is amended by revising paragraphs (a) and (b) as follows:

S5(a) Notwithstanding S4, a power operated window, partition or roof panel system may close if it is capable of meeting the following requirements—

(1) while closing, the window, partition or roof panel system reverses direction before contacting, to before exerting a force of 100 newtons or more on, any rigid circular cylindrical rod from 4 mm to 200 mm in diameter (but not exceeding the size of the opening at the test location) that is placed through the window, partition or roof panel system opening at any location in the manner described in S5(b), and

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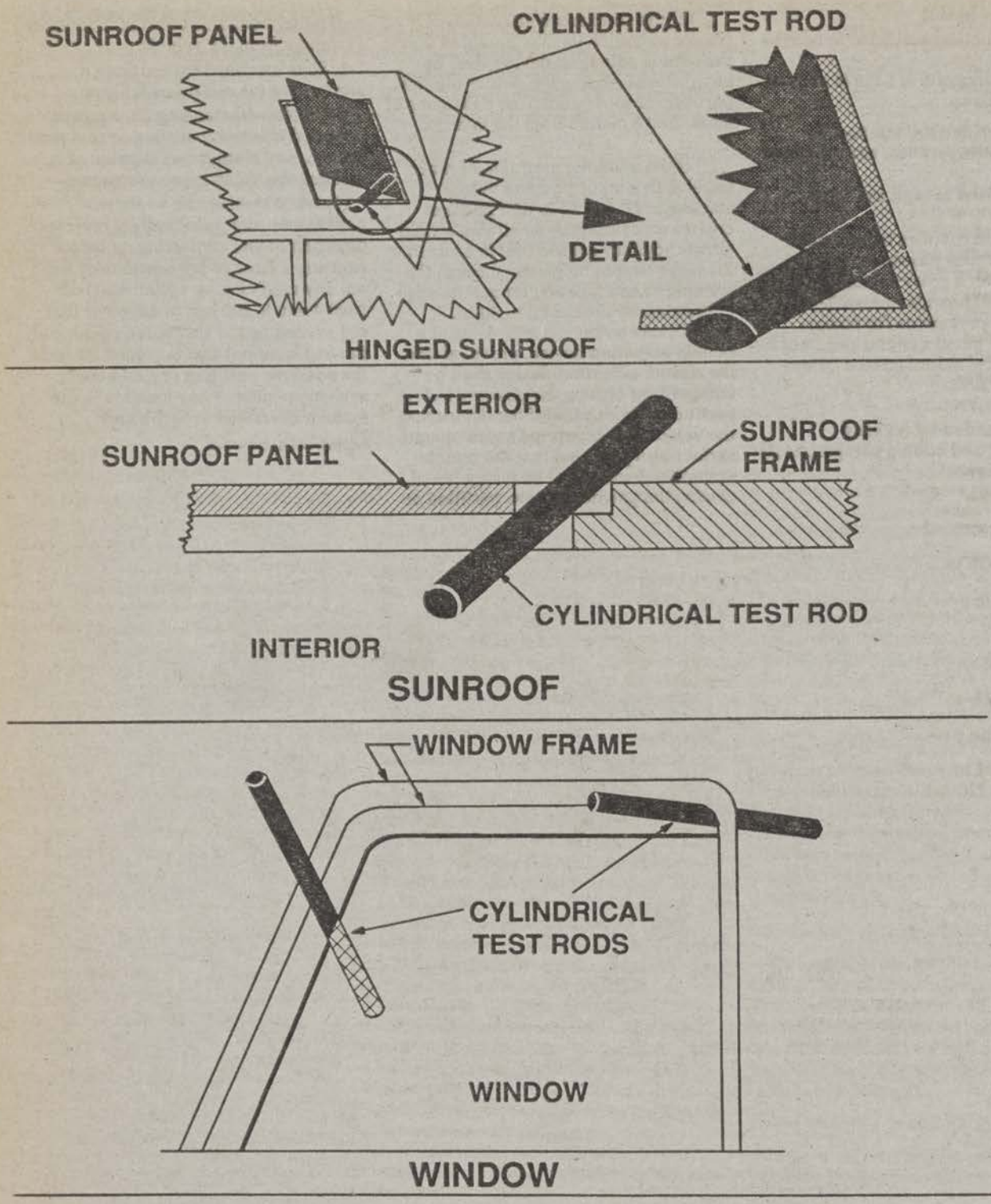

Figure 1 - Typical Cylindrical Test Rods Protruding through Sunroof and Window Daylight Openings

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(2) upon such reversal, opens to either a position that permits a rigid circular cylindrical rod that is 200 mm in diameter to be placed through the opening at the same contact point(s) as the rod described in S5(a)(1), or to a position that is at least as open as the position at the time closing was initiated.

(b) The test rod is placed through the window, partition or roof panel opening from the inside of the vehicle such that the cylindrical surface of the rod contacts any part of the structure with which the window, partition or roof panel mates. Typical placements of test rods are illustrated in Figure 1.

6. Figure 1 is added at the end of Standard No. 118 as follows:

Issued on June 1, 1992.

Jerry Ralph Curry,

Administrator.

[FR Doc. 92-13160 Filed 6-4-92; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 911176-2018]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for sablefish using hook-and-line gear in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the share of the sablefish total allowable catch (TAC) assigned to hook-and-line gear in this area.

DATES: Effective 12 noon, Alaska local time (A.l.t.), June 3, 1992, through 12 midnight, A.l.t., December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, Resource Management Specialist, Fisheries Management Division, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the exclusive economic zone within the GOA is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The share of the sablefish TAC assigned to hook-and-line gear in the Central Regulatory Area, which is defined at § 672.2, is established by the final notice of specifications (57 FR 2844, January 24, 1992) as 7,656 metric tons.

Under § 672.24(c)(3)(i), the Director of the Alaska Region, NMFS has determined that the share of the sablefish TAC assigned to hook-and-line gear in the Central Regulatory Area will be taken before the end of the year. Therefore, to provide adequate bycatch amounts of sablefish to ensure continued groundfish fishing activity by hook-and-line gear, NMFS is prohibiting directed fishing for sablefish by vessels using hook-and-line gear in the Central Regulatory Area, effective from 12 noon, A.l.t., June 3, 1992, through 12 midnight, A.l.t., December 31, 1992.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

Classification

This action is taken under 50 CFR 672.24 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 2, 1992.

Joe P. Clem,

Acting Director of Office Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-13200 Filed 6-2-92; 1:38 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 109
Friday, June 5, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-NM-22-AD]

Airworthiness Directives; Boeing Model 757 Series Airplanes Equipped With Rolls Royce Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes equipped with Rolls Royce engines, that currently requires inspections for cracked midspar fuse pins, and replacement of the pins, if necessary. The applicability of this action includes additional airplanes equipped with bulkhead-type fuse pins that were installed by the manufacturer and are also subject to cracking. This action also provides a terminating action for the inspection requirements. This proposal is prompted by an analysis conducted by the manufacturer which indicates that bulkhead-type fuse pins must be replaced at specified intervals. The actions specified by the proposed AD are intended to prevent the separation of the strut and engine from the wing.

DATES: Comments must be received by July 20, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103,Attention: Rules Docket No. 92-NM-22-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Rodriguez, Aerospace Engineer, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2779; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-22-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-22-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

On February 22, 1990, the FAA issued AD 90-03-51, Amendment 39-6523 (55 FR 7697, March 5, 1990), to require inspections of certain Boeing Model 757 series airplanes to detect cracked midspar fuse pins, and replacement of the pins, if necessary. That action was prompted by a report of an operator finding two completely fractured midspar fuse pins on the same strut on a Boeing Model 757 series airplane equipped with Rolls Royce engines. The requirements of that AD are intended to prevent the separation of the strut and engine from the wing.

Since the issuance of that AD, the manufacturer has installed bulkhead-type fuse pins on a second group of these airplanes. Results of a recent analysis have revealed that bulkhead-type fuse pins are also subject to cracking and must be replaced every 6,000 flight cycles in order to maintain an acceptable level of safety. Also, a terminating action for the inspections has been developed, which involves an inspection of the bushings of the midspar attachment and verification that the bushings' inside diameters are within specific allowable limits.

The FAA has reviewed and approved Boeing Alert Service Bulletin 757-54A0020, Revision 2, dated October 31, 1991, that describes procedures for repetitive inspections of the fuse pins to detect cracks, and replacement of cracked pins. Included in this bulletin are procedures for performing the inspection of the bushings of the midspar attachment which, if accomplished, terminates the need for the repetitive inspections of the fuse pins. This service bulletin also specifies the replacement times for the bulkhead fuse pins. The effectivity of this revised service bulletin includes additional airplanes equipped with bulkhead fuse pins that were installed by the manufacturer and are also subject to cracking.

The FAA has also reviewed and approved Boeing Alert Service Bulletin 757-54A0020, Revision 3, dated March 26, 1992. This revision is essentially the same as Revision 2, but includes instructions on how to replace the bushings in the wing side-load fitting and strut duckbill fittings.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 90-03-51 to continue to require inspections to detect cracking of

the midspar fuse pins, and replacement of cracked pins; and replacement of bulkhead fuse pins at specific intervals. This AD also contains provisions for terminating the repetitive inspections. The actions would be required to be accomplished in accordance with the service bulletin described previously.

There are approximately 223 Model 757 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 86 airplanes of U.S. registry would be affected by this proposed AD, which includes 38 airplanes that were affected by AD 90-03-51, and 48 additional airplanes affected by this proposal. The manufacturer has installed bulkhead fuse pins on 41 of these airplanes.

The FAA estimates that it would take approximately 8 work hours per airplane to accomplish the actions currently required by AD 90-03-51; 2 additional work hours to accomplish the bushings inspection that would be required by this proposed AD; and 56 additional work hours for the 41 airplanes equipped with bulkhead fuse pins to accomplish the fuse pin replacement that would be required by this proposed AD. The average labor rate would be $55 per work hour. Required parts for the 41 airplanes with bulkhead fuse pins would cost approximately $1,640 per airplane.

Based on these figures, the current cost impact of AD 90-03-51 on U.S. operators is $16,720. This proposed AD would add total costs of $26,400 for 48 additional airplanes to accomplish the requirements of this proposal; and total costs of $4,180 for the original 38 airplanes to accomplish the bushings inspection. It would also add total costs of $193,520 for the 41 airplanes equipped with bulkhead fuse pins to accomplish the actions required by this proposal. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $241,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-6523 (55 FR 7697, March 5, 1990), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 92-NM-22-AD. Supersedes AD 90-03-51, Amendment 39-6523.

Applicability: Model 757 series airplanes equipped with Rolls Royce engines; as listed in Boeing Alert Service Bulletin 757-54A0020, Revision 3, dated March 26, 1992; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent separation of the strut and engine from the wing, accomplish the following:

(a) For airplanes identified as Group 1 in Boeing Alert Service Bulletin 757-54A0020, Revision 3, dated March 26, 1992: Prior to the accumulation of 5,000 flight cycles on a new fuse pin or 1,500 flight cycles since the last inspection, or within the next 30 days after March 19, 1990 (the effective date of AD 90-03-51, Amendment 39-6523), whichever occurs later; and thereafter at intervals not to exceed 1,500 flight cycles: Perform an eddy current inspection to detect cracks of the engine strut midspar fuse pins, part number 311N5067-1, in accordance with Part III of the Accomplishment Instructions of Boeing Alert Service Bulletin 757-54A0020, Revision 3, dated March 26, 1992.

Note: Inspections accomplished in accordance with Boeing Alert Service Bulletin 757-54A0020, Revision 1, dated January 30, 1990, or Revision 2, dated October 31, 1991, prior to the effective date of this amendment, are considered to comply with the requirements of this paragraph.

(b) If a crack is found in any midspar fuse pin as a result of any inspection required by paragraph (a) of this AD, prior to further flight, inspect the 6 bushings per wing in the wing side-load fitting and strut duckbill fittings, in accordance with Boeing Alert Service Bulletin 757-54A0020, Revision 2, dated October 31, 1991, or Revision 3, dated March 26, 1992. As a result of the inspections required by this paragraph, accomplish the applicable procedure as specified in paragraph (b)(1), (b)(2), or (b)(3) of this AD, in accordance with the service bulletin.

(1) If any of the bushings in the wing side-load fitting or strut duckbill fittings are found to have an inside diameter measurement of greater than or equal to 1.5645 inches: Prior to further flight, install new fuse pins, part number 311N5067-1, and repeat the inspection of the fuse pins in accordance with paragraph (a) of this AD. Replace all bushings that have an inside diameter measurement of greater than 1.5633 inches within 12,000 flight cycles after the inspection of the bushings required by paragraph (b) of this AD.

(2) If all of the bushings in the wing side-load fitting and strut duckbill fittings are found to have an inside diameter measurement of less than or equal to 1.5644 inches, and one or more of the dimensions is between 1.5633 inches and 1.5645 inches: Prior to further flight, install new fuse pins, part number 311N5067-1, and repeat the inspection of the fuse pins in accordance with paragraph (a) of this AD at intervals not to exceed 3,000 flight cycles. Replace all bushings that have an inside diameter measurement of greater than 1.5633 inches within 12,000 flight cycles after the inspection of the bushings required by paragraph (b) of this AD.

(3) If all of the bushings in the wing side-load fitting and strut duckbill fittings are found to have inside diameter measurements of less than or equal to 1.5633 inches, accomplish the procedures specified in paragraphs (b)(3)(i) and (b)(3)(ii) of this AD:

(i) Prior to further flight, install new fuse pins, part number 311N5067-1, and repeat the inspection of the fuse pins in accordance with paragraph (a) of this AD; and

(ii) Within 10 days, submit a report of findings of the bushing inspection (in which all bushings are found to have inside diameter measurements of less than or equal to 1.5633 inches) to the Boeing Commercial Airplane Group. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) and have been assigned OMB Control Number 2120-0056.

(c) If no cracks are found in a midspar fuse pin as a result of the inspections required by paragraph (a) of this AD, prior to further flight, inspect the 6 bushings per wing in the wing side-load fitting and strut duckbill fittings in accordance with Boeing Alert Service Bulletin 757-54A0020, Revision 2, dated October 31, 1991, or Revision 3, dated March 26, 1992. As a result of the inspections required by this paragraph, accomplish the applicable procedure specified in paragraph

(c)(1), (c)(2), or (c)(3) of this AD, in accordance with the service bulletin.

(1) If any of the bushings in the wing side-load fitting or strut duckbill fittings are found to have an inside diameter measurement of greater than or equal to 1.5645 inches: Prior to further flight, re-install the removed fuse pins, and repeat the inspections of the fuse pins in accordance with paragraph (a) of this AD. Replace all bushings that have an inside diameter measurement of greater than 1.5633 inches within 12,000 flight cycles after the inspection of the bushings required by paragraph (c) of this AD.

(2) If all of the bushings in the wing side-load fitting and strut duckbill fittings are found to have an inside diameter measurement of less than or equal to 1.5644 inches: Prior to further flight, re-install the removed fuse pins and repeat the inspection of the fuse pins in accordance with paragraph (a) of this AD at intervals not to exceed 3,000 flight cycles. Replace all bushings that have an inside diameter measurement of greater than 1.5633 inches within 12,000 flight cycles after the inspection of the bushings required by paragraph (c) of this AD.

(3) If all of the bushings in the wing side-load fitting and strut duckbill fitting are found to have inside diameter measurements of less than or equal to 1.5633: Prior to further flight, re-install the removed fuse pins. No more inspections in accordance with this AD are required.

(d) For airplanes identified as Group 2 in Boeing Alert Service Bulletin 757-54A0020, Revision 3, dated March 26, 1992: Prior to the accumulation of 6,000 total flight cycles, or within 30 days after the effective date of this AD, whichever occurs later, inspect the 6 bushings per wing in the wing side-load fitting and strut duckbill fittings, and replace the engine midspar fuse pins, part number 311N5211-1, with new fuse pins having the same part number, in accordance with Boeing Alert Service Bulletin 757-54A0020, Revision 2, dated October 31, 1991, or Revision 3, dated March 26, 1992. As a result of the inspections required by this paragraph, accomplish the applicable procedure specified in either paragraph (d)(1) or (d)(2) of this AD, in accordance with the service bulletin.

(1) If any of the bushings in the wing side-load fitting or strut duckbill fittings are found to have an inside diameter measurement of greater than 1.5633 inches: Within 6,000 additional flight cycles after the inspection of the bushings required by paragraph (d) of this AD, remove all bushings that have an inside diameter measurement of greater than 1.5633 inches, and install new midspar fuse pins, part number 311N5967-1.

(2) If all of the bushings in the wing side-load fitting and strut duckbill fittings are found to have inside diameter measurements of less than or equal to 1.5633 inches: Within the next 6,000 flight cycles after the inspection of the bushings required by paragraph (d) of this AD, install new fuse pins, part number 311N5067-1.

(e) Accomplishment of the bushing replacement and installation of midspar fuse pins, part number 311N5067-1, in accordance with Boeing Alert Service Bulletin 757-54A0020, Revision 3, dated March 26, 1992, constitutes terminating action for the inspection requirements of this AD.

(f) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Seattle ACO.

(g) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 19, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-13075 Filed 6-4-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-NM-45-AD]

Airworthiness Directives; British Aerospace Model ATP Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain British Aerospace Model ATP series airplanes. This proposal would require installation of bonding straps to the oil cooler temperature controller in Module 3, the throttle stepper motor controller, and the engine de-ice timers. This proposal is prompted by reports of engine rundown (flame out) due to ice ingestion, resulting from static discharge and airframe and equipment electrical bonding difficulties that caused the engine de-icing timers to malfunction. The actions specified by the proposed AD are intended to prevent engine rundown due to ice ingestion.

DATES: Comments must be received by July 16, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-45-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC. 20041-0414. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113, FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-45-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-

NM-45-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

The Civil Aviation Authority, which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain British Aerospace Model ATP series airplanes. The Civil Aviation Authority advises that reports have been received of engine rundown (flame out) due to ice ingestion. Heavy electrostatic build-up on Module 3 apparently has caused spurious instrument and radio interference, resulting in malfunctioning of the engine intake de-ice timers. Consequently, ice build-up in the engine air intake systems was not signalled on the flight deck. If uncorrected, this condition could cause engine rundown due to ice ingestion.

British Aerospace has issued Service Bulletin ATP-24-45-35229A, dated December 20, 1991, that describes procedures for installation of bonding straps to the oil cooler temperature controller in Module 3, the throttle stepper motor controller, and the engine de-ice timers. The Civil Aviation Authority classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the Civil Aviation Authority has kept the FAA informed of the situation described above. The FAA has examined the findings of the Civil Aviation Authority, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require installation of bonding leads to the oil cooler temperature controller in Module 3, the throttle stepper motor controller, and the engine de-ice timers. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 10 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 13 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would be supplied by the manufacturer at no charge to operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $7,150.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES."**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Docket 92-NM-45-AD.

Applicability: Model ATP series airplanes; serial numbers 2001 through 2045, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent engine rundown (flame out) due to ice ingestion, accomplish the following:

(a) Within 90 days after the effective date of this AD, install bonding straps, Modification 35229A, at the oil cooler temperature controller in Module 3, the throttle stepper motor controller, and the engine de-ice timers, in accordance with British Aerospace Service Bulletin ATP-24-45-35229A, dated December 20, 1991.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Standardization Branch, ANM-113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 15, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-13076 Filed 6-4-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-NM-49-AD]

Airworthiness Directives; British Aerospace Model ATP Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain British Aerospace Model ATP series airplanes. This proposal would require installation of fixed fittings and electrical power filters into the main and side windscreen heating systems. This proposal is prompted by reports of voltage spikes in the windscreen heater power supply circuits, resulting in simultaneous loss (shut-down) of the pilot's and/or co-pilot's electronic flight instruments system (EFIS). The actions specified by the proposed AD are intended to prevent loss of EFIS displays.

DATES: Comments must be received by July 16, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-49-AD, 1601 Lind Avenue SW., Renton,

Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC. 20041–0414. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–49–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–49–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority, which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain British Aerospace Model ATP series airplanes. The Civil Aviation Authority advises that cases have been reported of voltage spikes (transients) in the windscreen heater power supply circuits, resulting in simultaneous loss (shut-down) of all tubes on either or both sides of the pilot's and/or co-pilot's electronic flight instruments system (EFIS). The voltage spikes are caused by airframe static electrical discharge. If uncorrected, this condition could result in loss of pilot's and/or co-pilot's EFIS displays.

British Aerospace has issued Service Bulletin ATP–30–20–10248A–10248C, Revision 1, dated February 17, 1992, that describes procedures for installation of fixed fittings and electrical power filters into the main and side windscreen electrical power supply circuits. Installation of these items will eliminate interference to EFIS from voltage spikes in the windscreen heater supply circuit. The Civil Aviation Authority classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the Civil Aviation Authority has kept the FAA informed of the situation described above. The FAA has examined the findings of the Civil Aviation Authority, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require installation of fixed fittings and electrical power filters into the main and side windscreen heating systems. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 10 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 41 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $9,500 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $117,550.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Docket 92–NM–49–AD.

Applicability: Model ATP series airplanes; serial numbers 2001 through 2045, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss (shut-down) of electronic flight instruments system (EFIS) displays, accomplish the following:

(a) Within 180 days after the effective date of this AD, install fixed fittings, Modification 10248C, and filter units, Modification 10248A, in the electrical power supplies to the main

and side windscreen heater system at the rear of the EFIS control panel, in accordance with British Aerospace Service Bulletin ATP-30-20-10248A/-10248C, Revision 1, dated February 17, 1992.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Standardization Branch, ANM-113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 15, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-13077 Filed 6-4-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-NM-56-AD]

Airworthiness Directives; British Aerospace Model BAe 146-100A, -200A, and -300A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all British Aerospace Model BAe 146-100A, -200A, and -300A series airplanes. This proposal would require repetitive X-ray inspections to detect cracks in the left and right wing upper skins, joint straps, and stringers, and repair of any cracks found. This proposal is prompted by results of wing fatigue tests, which indicate the possibility of cracking in both the left and right wing upper skin panels beneath the upper center line butt strap. Fatigue cracking in these areas, if not detected and corrected, could result in reduced structural integrity of the wings.

DATES: Comments must be received by July 21, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-56-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-56-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-56-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

The United Kingdom Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on all British Aerospace Model BAe 146-100A, -200A, and -300A series airplanes. The CAA advises that results of wing fatigue tests indicate the possibility of cracking in both the left and right wing upper skin panels beneath the upper center line butt strap. Fatigue cracking in these areas, if not detected and corrected, could result in reduced structural integrity of the wings.

British Aerospace has issued Inspection Service Bulletin 57-41, dated July 26, 1991, which describes procedures for repetitive X-ray inspections to detect cracks in the left and right wing upper skins, joint straps, and stringers at rib "O," and repair, if necessary. The CAA classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require repetitive X-ray inspections to detect cracks in the left and right wing upper skins, joint straps, and stringers at rib "O," and repair of any cracks found. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 74 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane (excluding access and reinstallation time) to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $16,280 for each inspection cycle.

The regulations proposed herein would not have substantial direct effects

on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Docket 92–NM–56–AD.

Applicability: All Model BAe 146–100A, –200A, and –300A series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the wings, accomplish the following:

(a) Prior to the accumulation of 24,000 landings, or within 60 days after the effective date of this AD, whichever occurs later: Perform an X-ray inspection to detect fatigue cracks in the left and right wing upper skins, joint straps, and stringers in the vicinity of rib "O," in accordance with British Aerospace Inspection Service Bulletin 57–41, dated July 26, 1991.

(1) If cracks are found, prior to further flight, repair in a manner approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Thereafter, repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 9,000 landings, in accordance with the service bulletin.

(2) If no cracks are found, repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 9,000 landings, in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 21, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–13078 Filed 6–4–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 92–NM–97–AD]

Airworthiness Directives; British Aerospace Model BAe 125–800A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain British Aerospace Model BAe 125–800A series airplanes. This proposal would require modification of the auxiliary power unit (APU) wiring. This proposal is prompted by a report that in the event of an uncontained engine failure, debris from the engine may damage the power supply wiring between certain electrical panels. The actions specified by the proposed AD are intended to prevent a short circuit, arcing, and an electrical fire.

DATES: Comments must be received by July 20, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–97–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041–0414. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Hank Jenkins, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–97–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–97–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

The United Kingdom Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain British Aerospace Model BAe 125–800A series airplanes. The CAA advises that in the event of an uncontained engine failure, debris from the engine may damage the power supply wiring between electrical panel "ZL" and the auxiliary power unit (APU) electrical panel, "ZK–A." This condition, if not corrected, could result in a short circuit, arcing, and an electrical fire.

British Aerospace has issued Service Bulletin 49–37–25A253A&B, dated October 28, 1991, which describes procedures for modification of the APU wiring by relocating certain power supply connections to protect against damage from engine debris. The CAA classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require modification of the APU wiring. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 108 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $11,880. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Docket 92–NM–97–AD.

Applicability: Model BAe 125–800A series airplanes; post-mod 259404B (Turbomach auxiliary power unit) and post-mod 258706 (Garrett auxiliary power unit); certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent a short circuit, arcing, and an electrical fire, accomplish the following:

(a) Within 120 days after the effective date of this AD, modify the auxiliary power unit wiring, in accordance with British Aerospace Service Bulletin 49–37–25A253A&B, dated October 28, 1991.

(b) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 18, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–13080 Filed 6–4–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 92–NM–58–AD]

Airworthiness Directives; British Aerospace Model DH/HS/BH/BAe 125 Series Airplanes, Excluding Model BAe 125–1000A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to British Aerospace Model BAe 125–600A, –700A, and –800A series airplanes, that currently requires a one-time inspection to detect misalignment of fuel feed pipe joints, and realignment, if necessary. That action was prompted by an incident in which the tailcone inside area of a Model BAe 125–800A series airplane was soaked with fuel that leaked out of fuel feed pipe joints during a high altitude transatlantic flight. This action would expand the applicability of the existing rule to include additional airplanes. These airplanes have been determined to be subject to the same unsafe condition addressed in the existing rule. The actions specified by the proposed AD are intended to prevent an in-flight fire hazard in the rear equipment bay.

DATES: Comments must be received by July 16, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–58–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9

a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC. 20041–0414. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–58–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–58–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

On December 20, 1991, the FAA issued AD 92–01–09, Amendment 39–8133 (57 FR 786, January 9, 1992), applicable to British Aerospace Model BAe 125–600A, -700A, and -800A series airplanes, to require a one-time inspection to detect misalignment of fuel feed pipe joints, and realignment, if necessary. That action was prompted by an incident in which the tailcone inside area of a Model BAe 125–800A series airplane was soaked with fuel that leaked out of fuel feed pipe joints during a high altitude transatlantic flight. The requirements of that AD are intended to prevent an in-flight fire hazard in the rear equipment bay.

Since issuance of that AD, British Aerospace has issued Service Bulletin SB 28–87, dated December 31, 1991, that describes procedures for a one-time inspection to detect misalignment of fuel feed pipe joints, and realignment, if necessary. This service bulletin is similar to Service Bulletin SB 28–86, which was referenced in the existing AD, but includes certain earlier models of Model BAe 125 series airplanes in its effectivity listing; these airplanes have been determined to be subject to the same unsafe condition addressed in Service Bulletin SB 28–86. The Civil Aviation Authority, which is the airworthiness authority for the United Kingdom, classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the Civil Aviation Authority has kept the FAA informed of the situation described above. The FAA has examined the findings of the Civil Aviation Authority, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 92–01–09, to expand the applicability of the existing rule to include certain earlier models of Model BAe 125 series airplanes. The applicability of the proposed rule would include all Model DH/HS/BH/BAe 125 series airplanes, except for the Model BAe 125–1000A. The actions would be required to be accomplished in accordance with the service bulletin described previously. The added airplanes would be provided with a longer compliance time than those affected by the existing AD, since they usually fly at lower altitudes; service experience has shown that an in-flight fire hazard in the rear equipment bay is more prevalent at higher altitudes.

The FAA estimates that 421 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 8 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $185,240.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8133 (57 FR 786, January 9, 1992), and by adding a new airworthiness directive (AD), to read as follows:

British Aerospace: Docket 92–NM–58–AD. Supersedes AD 92–01–09, Amendment 39–8133.

Applicability: British Aerospace Model DH/HS/BH/BAe 125 series airplanes, excluding Model BAe 125–1000A series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent an in-flight fire hazard in the rear equipment bay, accomplish the following:

(a) For airplanes listed in British Aerospace Service Bulletin SB 28–86, dated June 28, 1991: Within 60 days after January 24, 1992 (the effective date of AD 92–01–09, Amendment 39–8133), accomplish a visual inspection for proper alignment of fuel feed pipes at pipe joint couplings, in accordance with British Aerospace Service Bulletin SB 28–86, dated June 28, 1991. If misalignment is detected outside the specifications cited in the service bulletin, prior to further flight, correct the alignment by installing an "O" ring modification and fuel pipe clamping modification, in accordance with the service bulletin.

(b) For airplanes listed in British Aerospace Service Bulletin SB 28–87, dated December 31, 1991, and not subject to the requirements of paragraph (a) of this amendment: Within 6 months after the effective date of this AD, accomplish a visual inspection for proper alignment of fuel feed pipes at pipe joint couplings, in accordance with British Aerospace Service Bulletin SB 28–87, dated December 31, 1991. If misalignment is detected outside the specifications cited in the service bulletin, prior to further flight, correct the alignment by installing an "O" ring modification and fuel pipe clamping modification, in accordance with the service bulletin.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 15, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–13079 Filed 6–4–92; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 92–NM–79–AD]

Airworthiness Directives; Israel Aircraft Industries, Ltd., Model 1125 Astra Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Israel Aircraft Industries, Ltd., Model 1125 Astra series airplanes. This proposal would require inspection of all oxygen tubing for security, chafing, and general condition; and protection of the oxygen tubing, if necessary. This proposal is prompted by indications of potentially insufficient clearance around the oxygen lines such that chafing can occur. The actions specified by the proposed AD are intended to prevent chafing and damage to the oxygen tubing, which could lead to increased potential for fire ignited from arcing or heated components.

DATES: Comments must be received by July 20, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–79–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Astra Jet Corporation, Technical Publications, 77 McCollough Drive, suite 11, New Castle, Delaware 19720. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2145; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–79–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–79–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Administration of Israel (CAAI), which is the airworthiness authority for Israel, recently notified the FAA that an unsafe condition may exist on certain Astra Model 1125 series airplanes. The CAAI advises that the manufacturer discovered that there may not be sufficient clearance around the oxygen lines to prevent chafing. Without sufficient clearance, an oxygen line may be chafed by wires, components, or adjacent structure; however, to date, there have been no occurrences of chafing. If the oxygen line is chafed or burned through, there is potential for loss of oxygen reserved for high altitude operation or emergency descent after decompression. Additionally, chafing or damage of the oxygen tubing could result in an increased potential for fire ignited from arcing or heated components. Israel Aircraft Industries, Ltd., has issued Astra Service Bulletin SB 1125–35–071, dated February 12, 1992, which describes procedures for inspecting the oxygen tubing for general condition, security, and chafing; and for protecting the tubing by wrapping it with neoprene rubber. The CAAI

classified this service bulletin as mandatory.

This airplane model is manufactured in Israel and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAAI has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAAI, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require inspection of all oxygen tubing for security, chafing, and general condition; and protection of the oxygen tubing, if necessary. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 45 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 40 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $20 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $99,900. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Israel Aircraft Industries, Ltd.: Docket 92–NM–79–AD.

Applicability: Model 1125 Astra series airplanes, all serial numbers prior to 059; certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent chafing and damage to the oxygen tubing, which could lead to increased potential for fire ignited from arcing or heated components, accomplish the following:

(a) Within 200 hours time-in-service or within 6 months after the effective date of this AD, whichever occurs first, inspect all oxygen tubing for security, chafing, and general condition, in accordance with Astra Service Bulletin SB 1125–35–071, dated February 12, 1992.

(b) If any discrepancies are detected as a result of the inspections required by paragraph (a) of this AD, prior to further flight, protect the oxygen tubing, in accordance with Astra Service Bulletin SB 1125–35–071, dated February 12, 1992.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 19, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–13082 Filed 6–4–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 92–NM–84–AD]

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 series airplanes. This proposal would require inspections to detect fatigue cracks of the side skin and doubler surrounding the pressure relief door assembly of the tail pylon, and structural modification of the tail pylon pressure relief door opening. This proposal is prompted by a full-scale fatigue test that detected the development of fatigue cracks. The actions specified by the proposed AD are intended to prevent skin and doubler fatigue cracking, which could cause loss of fail safe capability of the tail pylon structure.

DATES: Comments must be received by July 20, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–84–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846–0001, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1–L5B. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Wahib Mina, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM–121L, FAA, Transport Airplane Directorate 3229 East Spring

Street, Long Beach, California 90806–2425; telephone (310) 988–5324; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–84–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–84–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

McDonnell Douglas has reported that, during a full-scale fatigue test involving the Model MD–11 tail pylon, cracks developed at the right-hand side center pressure relief cutout corners through the side skin and doubler for the tail pylon. These fatigue cracks were observed at 13,000 simulated flight cycles during the tail pylon fatigue test. This is equivalent to 6,500 airplane landings. The side skin and doubler of the tail pylon were designed to meet their fatigue life of a minimum of 20,000 landings. Fatigue of the tail pylon side skin and doubler is caused by high local stress level. Fatigue cracking of the skin and doubler, if not detected and corrected in a timely manner, could result in the loss of fail safe capability of the tail pylon structure.

The FAA has reviewed and approved McDonnell Douglas Service Bulletin 54–17, dated February 24, 1992, that describes procedures for inspecting for cracks of the tail pylon skin around pressure relief door and installing an interim modification or one of two permanent modifications, as applicable. The interim modification involves installation of interim external doublers. One of the permanent modifications involves the installation of an internal doubler, frame, and stiffener; and the other involves the installation of external doublers, an internal doubler, frame, and stiffener. If the interim modification is installed, one of the two permanent modifications must be installed in the future, as applicable. The purpose of the modification is to increase structural reliability and fatigue life of the tail pylon skin.

Note: This service bulletin refers to Rohr Industries Service Bulletin MD–11 54–160, dated January 31, 1992, that provides additional information about the inspection and modification of the tail pylon pressure relief cutout.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require inspections to detect fatigue cracks of the side skin and doubler surrounding the pressure relief door assembly of the tail pylon, and structural modification of the tail pylon pressure relief door opening. The actions would be required to be accomplished in accordance with the service bulletin described previously.

There are approximately 28 McDonnell Douglas Model MD–11 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 18 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection requirements, and that the average labor rate is $55 per work hour. Based on these figures, the total cost of the inspection requirements of the proposed AD on U.S. operators would be $990.

Installation of the interim modification would take approximately 35 hours to accomplish, and the average labor rate would be $55 per work hour. Parts will be provided at no cost to the operators. Based on these figures, the cost to U.S. operators who install the interim modification would be $1,925 per airplane.

Installation of the permanent modification (without removal of the interim modification) would take approximately 308 work hours to accomplish, and the average labor rate would be $55 per work hour. Parts will be provided at no cost to operators. Based on these figures, the total cost to U.S. operators who install the permanent modification (without removing the interim modification) would be $16,940 per airplane.

Installation of the permanent modification (with removal of the interim modification) would take approximately 316 work hours to accomplish, and the average labor rate would be $55 per work hour. Parts will be provided at no cost to operators. Based on these figures, the total cost to U.S. operators who install the permanent modification (with removing the interim modification) would be $17,380 per airplane.

Based on the figures discussed above, the total cost impact of the proposed AD on U.S. operators would be between $305,910 and $348,480. These total cost figures assume that no operator has yet accomplished the proposed requirements of this AD.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 92-NM-84-AD.

Applicability: Model MD-11 series airplanes, as listed in McDonnell Douglas Service Bulletin 54-17, dated February 24, 1992; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent skin and doubler fatigue cracking, which could cause loss of fail safe capability of the tail pylon structure, accomplish the following:

(a) For Group I airplanes, as listed in McDonnell Douglas Service Bulletin 54-17, dated February 24, 1992, prior to the accumulation of 2,100 landings or within 60 days after the effective date of this AD, whichever occurs later, visually inspect to detect cracks on the tail pylon skin and interior doubler around the pressure relief door, and install either the interim or permanent modification, as specified in sub-paragraphs (a)(1) and (a)(2) of this AD, in accordance with McDonnell Douglas Service Bulletin 54-17, dated February 24, 1992.

(1) If no cracks are detected, prior to further flight, install either the interim modification, which consists of interim external doublers; or the permanent modification, which consists of internal doubler, frame, and stiffener. If the interim modification is installed, prior to the accumulation of 6,000 landings or within 60 days after the effective date of this AD, whichever occurs later, install the permanent modification (internal doubler, frame, and stiffener), in accordance with McDonnell Douglas Service Bulletin 54-17, dated February 24, 1992.

(2) If cracks are detected, prior to further flight, install the permanent modification, which consists of external doublers, internal doubler, frame, and stiffener, in accordance with McDonnell Douglas Service Bulletin 54-17, dated February 24, 1992.

(b) For Group II airplanes, as listed in McDonnell Douglas Service Bulletin 54-17, dated February 24, 1992, prior to the accumulation of 6,000 landings or within 60 days after the effective date of this AD, whichever occurs later, conduct a dye penetrant inspection for cracks of the tail pylon skin around the pressure relief door, in accordance with McDonnell Douglas Service Bulletin 54-17, dated February 24, 1992.

(1) If no cracks are found, prior to further flight, install the permanent modification, which consists of an internal doubler, frame, and stiffener, in accordance with McDonnell Douglas Service Bulletin 54-17, dated February 24, 1992.

(2) If cracks are detected, prior to further flight, install the permanent modification which consists of external doublers, internal doubler, frame, and stiffener, in accordance with McDonnell Douglas Service Bulletin 54-17, dated February 24, 1992.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Los Angeles ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 19, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-13083 Filed 6-4-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-CE-27-AD]

Airworthiness Directives; Piper Aircraft Corporation PA-31 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 80-20-04, which currently requires repetitive inspections of the engine baffle seals to ensure that they are all positioned properly on certain Piper Aircraft Corporation (Piper) PA-31 series airplanes, and reinforcement of any baffle seal that is positioned improperly. That AD allows the repetitive inspections to be eliminated if the reinforcement is incorporated. The Federal Aviation Administration (FAA) has received reports of reinforced baffle seals found improperly positioned. The proposed AD would retain the inspection and possible reinforcement requirements of AD 80-20-04, but would not allow the repetitive inspections to be eliminated. The actions specified by the proposed AD are intended to prevent improper sealing of the baffle seals to the engine cowling, which could result in high engine operating temperatures.

DATES: Comments must be received on or before August 14, 1992.

ADDRESSES: Submit comments in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-CE-27-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that is applicable to this AD may be obtained from the Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960; Telephone (407) 567-4361. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Ms. Juanita Craft-Lloyd, Aerospace Engineer, Propulsion Branch, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349; Telephone (404) 991-3810.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 92-CE-27-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention:

Rules Docket No. 92–CE–27–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

Airworthiness Directive 80–20–04, Amendment 39–3925 (45 FR 64168, September 29, 1980), currently requires repetitive inspections of the engine baffle seals to ensure that they are all positioned properly on certain Piper PA–31 series airplanes, and reinforcement of any baffle seal that is improperly positioned. The possible reinforcement is accomplished in accordance with Piper Service Bulletin (SB) No. 693, dated July 28, 1980. AD 80–20–04 allows the repetitive inspection to be eliminated if the reinforcement is incorporated.

The FAA has received several reports from Airworthiness Aviation Safety Inspectors indicating that baffle seal problems still exist on certain Piper PA–31 series airplanes that are in compliance with AD 80–20–04. The baffle seals on the airplanes involved in the referenced incidents were reinforced as specified in AD 80–20–04, and, as a result, have eliminated the repetitive inspections in accordance with paragraph (c) of that AD. These reports establish that these reinforced baffle seals have deteriorated and reinforcement patches have lost their effectiveness.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that additional AD action should be taken in order to prevent improper sealing of the baffle seals to the engine cowling, which could result in high engine operating temperatures.

Since an unsafe condition has been identified that is likely to exist or develop in other Piper PA–31 series airplanes of the same type design, the proposed AD would supersede AD 80–20–04, Amendment 39–3925, with a new AD that would retain the inspection and possible reinforcement requirements of AD 80–20–04, but would not allow the repetitive inspections to be eliminated. The possible reinforcement would be accomplished in accordance with Piper SB No. 693, dated July 28, 1980.

The FAA estimates that 2,448 airplanes in the U.S. registry would be affected by the proposed AD and that it would take approximately 0.5 workhours per airplane to accomplish the proposed inspections. Since an owner/operator who holds a private pilot certificate as authorized by FAR 43.7 is allowed to accomplish the proposed inspections, the only cost impact upon the public would be the time it takes to accomplish these inspections. AD 80–20–04, which would be superseded by the proposed action, currently requires the same actions as is proposed except for not allowing the repetitive inspections to be eliminated. The only difference between the proposed AD and AD 80–20–04 is the time incurred through repetitive interval inspections.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 80–20–04, Amendment 39–3925 (45 FR 64168, September 29, 1980), and by adding the following new airworthiness directive:

Piper Aircraft Corporation: Docket No. 92–CE–27–AD Supersedes AD 80–20–04, Amendment 39–3925.

Applicability: Model PA–31, PA–31–300, and PA–31–325 airplanes (serial numbers 31–2 through 31–8012089), and Model PA–31–350 airplanes (serial numbers 31–5001 through 31–8052199), certificated in any category.

Compliance: Required within the next 50 hours time in-service (TIS) after the effective date of this AD, unless already accomplished (superseded AD 80–20–04, Amendment 39–3925), and thereafter at intervals not to exceed 50 hours TIS.

To prevent improper sealing of the baffle seals to the engine cowling, which could result in high engine operating temperatures, accomplish the following:

(a) Visually inspect the engine baffle seals for proper positioning by using a light and looking in air inlets and access doors to ensure that forward seals and lower aft seals are all facing forward and not blown back.

(b) If baffle seals are improperly positioned (blown back), prior to further flight, reinforce the seals in accordance with the instructions in Piper Service Bulletin No. 693, dated July 28, 1980.

Note 1: The reinforcement of the baffle seals in accordance with paragraph (b) of this AD does not eliminate the repetitive inspection requirement of this AD.

(c) The repetitive inspections required by paragraph (a) of this AD may be performed by the owner/operator holding at least a private pilot certificate as authorized by FAR 43.7, and must be entered into the aircraft records showing compliance with this AD in accordance with FAR 43.11.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta Aircraft Certification Office.

(f) All persons affected by this directive may obtain copies of the document referred to herein upon request to the Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(g) This amendment supersedes AD 80–20–04, Amendment 39–3925.

Issued in Kansas City, Missouri, on May 29, 1992.

Larry D. Mallr,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-13174 Filed 6-4-92; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC-18736, File No. S7-12-92]

RIN 3235-AF47

Exclusion From the Definition of Investment Company for Certain Structured Financings

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule and request for comment.

SUMMARY: The Commission is proposing a new rule under the Investment Company Act of 1940 (the "Act") to exclude certain issuers that pool income-producing assets and issue securities backed by those assets ("structured financings") from the definition of "investment company." The proposal would permit structured financings that meet the conditions of the rule to publicly offer their securities in the United States without registering under the Act and complying with the Act's substantive provisions. The proposed rule is intended to remove an unnecessary and unintended barrier to the use of structured financings in all sectors of the economy, including the small business sector.

DATES: Comments must be received on or before August 4, 1992.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. All comment letters should refer to File No. S7-12-92. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Rochelle G. Kauffman, Senior Counsel, (202) 272-2038, Elizabeth R. Krentzman, Attorney, (202) 272-5416, or Karen L. Skidmore, Assistant Director, (202) 272-2048, Office of Regulatory Policy, Division of Investment Management, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission today is requesting public comment on proposed rule 3a-7 under the Investment Company Act of 1940 [15 U.S.C. 80a] (the "Act"). Proposed rule 3a-7 would effectuate the recommendation made in Chapter 1 of the Division of Investment Management's recently issued report, *Protecting Investors: A Half Century of Investment Company Regulation.*[1] In addition, the Commission is requesting public comment on whether section 3(c)(5) of the Act [15 U.S.C. 80a-3(c)(5)] should be amended, particularly in light of the proposed rule.

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Executive Summary

Proposed rule 3a-7 would exclude from the definition of investment company in section 3(a) of the Act [2] certain issuers that pool income-producing assets and issue primarily debt or debt-like securities backed by those assets for the purpose of providing their sponsors financing and other related benefits. In the last decade, this finance technique, called "structured finance,"[3] has become one of the dominant means of capital formation in the United States; in 1991, structured financings accounted for approximately half of all publicly offered securities in the United States.[4]

Despite the volume of offerings, the Act to some degree has constrained the development of the structured finance market. Structured financings generally fall within the definition of investment company under section 3(a), but are unable to operate under the Act's requirements.[5] Many private sector sponsored financings have avoided regulation under the Act by relying on the exception from the definition of investment company in section 3(c)(5), which originally was intended to exclude issuers engaged in the commercial finance and mortgage banking industries.[6] The Commission has exempted by order certain other structured financings, primarily those involving mortgage-related assets, under section 6(c), the general exemptive provision of the Act.[7] Financings that

[1] SEC Division of Investment Management, Protecting Investors: A Half Century of Investment Company Regulation, *The Treatment of Structured Finance under the Investment Company Act* 1-101 (1992) [hereinafter Structured Finance Chapter]. This report concluded a two-year examination of the regulation of investment companies and certain other pooled investment vehicles. In the course of this examination, the Division of Investment Management (the "Division") met with representatives of entities associated with the structured finance industry to discuss, among other things, how structured financings work, the roles of the various participants, the status of the structured finance market, likely developments, and investor protection concerns. The Structured Finance Chapter discusses the Division's findings. Many of the Division's recommendations were based on suggestions made by commenters responding to a Commission release requesting comment on the regulation of investment companies and related issues, including the treatment of structured financings under the Act. SEC Request for Comment on the Reform of Investment Companies, Investment Company Act Release No. 17534 § III.C. (June 15, 1990), 55 FR 25322 (June 25, 1990) [hereinafter Study Release].

[2] 15 U.S.C. 80a-3(a).

[3] Although structured finance is the term most commonly used to describe this financing technique, other terms, such as "asset-backed arrangements," "asset-backed financings," "asset securitization," and "structured securitized credit," also have been used.

[4] Michael Liebowitz, *Reversing Four-Year Trend and Swooning Economy, Wall Street Explodes in 1991*, Inv. Dealers Dig., Jan. 6, 1992, at 21-23 (statistic excludes offerings of United States Treasury obligations).

[5] For example, the limitations of section 18 on the issuance of senior securities and the prohibitions of section 17 on transactions involving affiliates conflict with the operations of structured financings. 15 U.S.C. 80a-18, -17.

[6] S. Rep. No. 1775, 76th Cong., 3d Sess. 13 (1940); H.R. Rep. No. 2639, 76th Cong., 3d Sess. 12 (1940).

In addition, certain federally sponsored structured financings, such as those sponsored by the Federal National Mortgage Association, are exempted from the Act under section 2(b), which exempts, among other things, activities of United States Government instrumentalities and wholly-owned corporations of such instrumentalities. 15 U.S.C. 80a-2(b).

[7] 15 U.S.C. 80a-6(c). Section 6(c) provides that the Commission may exempt, by rule or order,

any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provisions of this title or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title.

Id.

cannot rely on section 3(c)(5) or obtain an exemption must sell their securities in private placements in reliance on section 3(c)(1),[8] the "private" investment company exception, or outside the United States.

In sum, under the present regulatory framework, a structured financing may be entirely exempt from the Act, or it may be subject to the Act and thus sold overseas or in private placements, depending solely on the nature of the assets securitized. Ironically, the result does not depend on the structure and operation of structured financings or the credit quality of the securitized assets. Many investors may be prevented from acquiring sound capital market instruments. In addition, some sponsors are denied the opportunity to obtain the benefits of publicly offered structured financings, even though they hold assets that, as a financial matter, readily could be securitized.

Application of the Act to structured financings has broad economic implications. Excepted or exempt structured financings have increased the availability of certain financial assets, often at lower costs. Structured finance, for example, has been credited with making the home mortgage market generally resistant to funding shortages.[9] Due to the applicability of the Act, however, some sectors of the economy, including small business, generally have been unable to use structured financings as sources of capital.

Proposed rule 3a–7 would remove an unnecessary barrier to the use and development of structured financings by excluding structured financings that meet certain conditions from the definition of investment company under the Act.[10] These conditions are intended to delineate the operational distinctions between registered investment companies and structured financings, permit the continued evolution of the structured finance market, and address any investor protection concerns that could arise. The proposed rule provides an exclusion for structured financings, regardless of the assets securitized.

The Commission also is requesting comment on whether section 3(c)(5) of the Act should be amended, either to narrow or to expand its scope. Some have suggested that certain types of issuers should not be able to rely on this section, while others have argued that the section is unnecessarily narrow.

I. Background [11]

A. The Structured Finance Market

The modern structured finance market originated in the 1970's with the securitization of residential mortgages. Since then, structured financings have become a major facet of American finance.[12] In 1991, securities of structured financings publicly offered in the United States totalled approximately $292.8 billion, accounting for approximately fifty percent of total public securities issuances (debt and equity) and fifty-seven percent of total debt securities issuances in the United States.[13]

Structured financings backed by residential mortgages dominate the structured finance market; in 1991, publicly offered mortgage-backed securities issuances in the United States totalled approximately $246.21 billion, or eighty-four percent of the structured finance market.[14] The non-mortgage market, which emerged in the mid-1980's, also has grown rapidly. Volume of non-mortgage asset-backed public offerings in 1991 totalled approximately $50.8 billion, up from $10 billion in 1986.[15] Securities backed by automobile loans and credit card account receivables represent approximately eighty percent of the public non-mortgage structured finance market. Other assets presently securitized and offered publicly include home equity loans, boat loans, computer leases, airplane leases, mobile home loans, recreational vehicle loans, and hospital account receivables.

A significant domestic private placement market for structured finance issues also exists. Although some private offerings are similar to those sold publicly, many private placements involve types of structured financings that have never been publicly offered in the United States, in part because of the Act. These financings include those backed by installment loans, future royalties, high yield bonds, and Medicare receivables.

Most public offerings of structured financings are issued under programs sponsored by the federal government or by government sponsored enterprises. Securities issued under programs sponsored by the Government National Mortgage Association ("GNMA"), the Federal National Mortgage Association ("FNMA"), and the Federal Home Loan Mortgage Corporation ("FHLMC") dominate the mortgage market.[16] In 1991, the Resolution Trust Corporation began issuing securities backed by mortgages, junk bonds, and other assets acquired from failed savings and loan associations.[17]

The private sector also is active in sponsoring structured financings. The most active sponsors in the private sector include commercial banks, savings and loan associations, automobile manufacturers, retailers, finance companies, insurance companies, and investment banks. These sponsors securitize assets for a variety of reasons. Structured financings often enable a sponsor to gain access to an alternative, usually cheaper, funding source. In addition, some sponsors find that securitizing assets allows them to manage their loan portfolios, and in turn, their balance sheets more effectively.[18] Banks and savings and loan associations also securitize assets to facilitate compliance with regulatory capital requirements.

B. The Securitization Process

The basic structures of all structured financings, regardless of the underlying

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[8] 15 U.S.C. 80a–3(c)(1).

[9] *See, e.g.*, Brant K. Maller, The Collateralized Mortgage Obligation: The Latest Phase in the Evolution of Mortgage-Backed Securities, *13 Real Estate* L.J. 299, 300–301 (1985).

[10] Of course, structured financings would remain subject to various regulatory requirements under the Securities Act of 1933 [15 U.S.C. 77a–77aa], the Securities Exchange Act of 1934 [15 U.S.C. 78a–78*ll*], and the Trust Indenture Act of 1939 [15 U.S.C. 77aaa–77bbbb] as well as other federal and state laws.

[11] This section provides a brief overview of the structured finance market, the organization and operation of a structured financing, the application of the Act to structured financings, and the effects of the Act on the structured finance market. A more detailed discussion is included in the Structured Finance Chapter, *supra* note 1, §§ I–IV.

[12] As discussed below, federally sponsored financings have played a major role in this development. Most of these programs rely on the exemption in section 2(b) of the Act.

[13] Liebowitz, *supra* note. 4

[14] *Id.*

[15] Dean Witter Reynolds Inc., Asset-Backed Securities Reference Guide A–10 (Year Ended 1991). *See also* Liebowitz, *supra* note 4, at 22 (reporting $46.6 billion of non-mortgage asset-backed securities issued in the United States).

[16] In 1990, FHLMC, GNMA, and FNMA sponsored programs were responsible for 94.2% of mortgage-backed pass-through securities and 82.2% of multiclass mortgage-backed securities issued that year. *See* Federal Home Loan Mortgage Corp., *Database, in* The Secondary Mortgage Markets, Tables 2, 3 (Winter 1991/1992).

[17] In addition, the Federal Agricultural Mortgage Corporation issues securities backed by agricultural mortgages guaranteed by the Farmers Home Administration. The Small Business Administration securitizes a small portion of the loans it guarantees. Finally, as discussed in Section I.C. below, in the late 1980's, the federal government sold portions of the loan portfolios of certain government agencies, which in turn, were pooled and securitized.

[18] By converting financial assets into cash (which can be used to retire debt or acquire new receivables), structured finance enables sponsors to reduce interest rate risk and to diversify their portfolios.

assets, are remarkably similar.[19] Typically, a sponsor transfers a pool of homogeneous financial assets to the issuer, a special purpose entity,[20] in return for the proceeds from the sale of one or more classes of securities backed by these assets. The securities issued generally are debt securities or equity securities with debt-like characteristics ("fixed-income securities").[21] Payment on the securities depends primarily on the cash flows generated by the pooled assets.[22] Issuers that have more assets or that expect to receive more income than needed to make full payment on the fixed-income securities may sell interests in the residual cash flow. These interests are typically sold to highly sophisticated investors.[23]

The issuer's only business activity is to acquire the sponsor's assets and issue securities. A servicer, which often is the sponsor or an affiliate of the sponsor, is the primary administrator of the financing. Generally, the servicer collects payments on the underlying assets when due and ensures that funds are available so that investors are paid in a timely manner. An independent trustee, usually a large commercial bank, typically holds the issuer's assets, or documentation of interest in the assets, in a segregated account for the benefit of investors. The trustee also monitors the issuer's fulfillment of its obligations.

Initially, most financings were structured so that their pools were fixed at the time of issuance, with "management" of the assets (other than servicing) generally limited to the substitution of new, similar assets for defective assets.[24] As the structured finance market has evolved, structures have been developed that rely to a greater degree on management. Many financings allow the servicer or trustee to reinvest idle cash in short-term debt obligations when there is a timing mismatch between collections and payments to investors. In some financings, the issuer may acquire additional assets if the previously designated assets do not generate sufficient cash flows to pay investors.[25] Finally, recently developed structures permit an issuer to purchase assets and issue securities on an ongoing basis.[26] In each case, guidelines governing both the level and type(s) of permissible management are established prior to the issuance of the financing's securities.

Publicly offered structured financings typically issue at least one class of securities rated in one of the two highest categories by a nationally recognized statistical rating organization, or "rating agency."[27] As with a traditional corporate bond, a rating of a structured financing assesses credit risk (*i.e.*, the likelihood that the investor will receive full and timely payments).[28]

In rating a structured financing, rating agencies generally apply the same basic approach, regardless of the assets securitized.[29] Rating agencies examine (i) the structure of the financing, including the risk that the insolvency of the financing's sponsor would affect payments to investors;[30] (ii) the credit risk of the financing, including the potential impairment of the cash flows from the pooled assets due to borrower delinquencies or defaults;[31] and (iii) risks related to the actual cash flow funding the securities, including the allocation of cash flow under the financing's payment structure.[32] Based on this examination, rating agencies determine the amount of credit enhancement necessary for the structured financing to obtain the rating desired by the sponsor.

Financings typically are structured and operated in accordance with criteria developed by the rating agencies to minimize various risks. Rating agencies, for example, may require that the transfer of the assets from the sponsor to the issuer be a "true sale" and not a

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[19] While this section discusses the basic components of a structured financing, there are a wide range of permutations. For a discussion of these permutations, see Structured Finance Chapter, *supra note*, 1 § III.A. *See also* Jason H.P. Kravitt, A Brief Summary of Structures Utilized in the Securitization of Financial Assets, in 1 Securitization of Financial Assets § 4 (Jason H.P. Kravitt ed. 1991) [hereinafter Securitization of Financial Assets].

[20] The special purpose entity may be a corporation, a grantor trust, an owner's trust, or a partnership. The form of organization depends generally on tax considerations and the payment structure of the financing and its securities. For a general discussion of payment structures and attendant tax issues, see, *e.g.*, William A. Schmalz *et al.*, *Tax Issues in* 1 Securitization of Financial Assets, *supra* note 19, §§ 9.01 – 9.06; Charles M. Adelman & Roger D. Lorence, *Tax Considerations*, The Asset Securitization Handbook, 48–63 (Phillip Zweig ed., 1989).

[21] These securities typically entitle the holder to a specified principal amount at maturity and bear interest at a fixed rate or at an adjustable rate, which may be determined periodically by reference to an index, through auctions among investors or prospective investors, or through the remarketing of the instrument. Interest payments also may be determined by reference to all or part of the interest received on the underlying assets.

Generally, the type of security issued depends in part on the payment structure. Under a "pass-through" structure, a single class of securities is issued, with each security representing a fractional interest in the underlying pool. A "pay-through" structure permits the issuance of multiple classes of securities, with each class having differing maturities and payment schedules. Both structures permit the issuance of "stripped securities" (such as interest-only and principal-only certificates) and classes of senior and subordinate securities.

[22] Some financings also include credit enhancements, such as irrevocable standby letters of credit ("LOCs"), financial guarantee insurance, or cash collateral accounts, that could be drawn upon if the cash flows from the assets prove insufficient to meet the issuer's obligations.

Not all financings offer securities backed by the cash flow from the underlying assets. As discussed in note 65 *infra*, a few structured financings have employed a "market value" structure, in which payment on the securities is derived from the aggregate market value of the pooled assets, rather than from the cash flow from the underlying assets.

[23] As discussed *infra* note 77, residual interests are highly volatile instruments that bear any losses first resulting from an insufficient cash flow.

[24] Circumstances under which substitution may occur are described *infra* note 80.

[25] Credit card financings, for example, are backed by current and future receivables generated by specified credit card accounts; the balance of the pooled assets fluctuate as new receivables are generated and existing amounts are paid or charged off as a default. If the accounts do not generate sufficient receivables to support the securities, the sponsor may be required to assign receivables from other accounts to the pool.

[26] These structures include master trust programs, used predominantly in financings backed by credit card receivables, and asset-backed commercial paper programs. In a master trust program, the sponsor initially transfers a large amount of assets and the structured financing issues multiple classes of securities, often with varying terms, over time. Under certain conditions, assets may be added or removed throughout the life of the issuer. Asset-backed commercial paper programs issue commercial paper on an ongoing basis and are backed by a diversified pool of assets, with assets added to the pool throughout the life of the program. Asset-backed commercial paper programs generally contain a variety of relatively short-term assets, such as credit card receivables, automobile lease receivables, trade receivables, and short-term money market instruments.

[27] At least four rating agencies, Standard & Poor's Corporation, Moody's Investors Service, Inc., Fitch Investors Service, Inc., and Duff & Phelps, Inc., currently are active in rating domestic structured financings.

Providers of external credit support, such as the issuers of LOCs or financial guarantee insurers, also may play a role in structuring the financing. As in most securities issuances, underwriters and independent auditors also are participants.

[28] A rating does not address market risks to investors that may result from changes in interest rate levels or from prepayments on the assets in the underlying pool. *See, e.g.*, Standard & Poor's Corporation, S&P's Structured Finance Criteria 101 (1988).

[29] Asset-backed commercial paper programs are subject to somewhat different rating criteria because of the nature of the securities they offer. For a more detailed discussion of the role of the rating agencies, *see, e.g.*, Peter V. Darrow, et al., *Rating Agency Requirements in* 1 Securitization of Financial Assets, *supra* note 19.

[30] Rating agencies also examine whether the issuer itself could become subject to bankruptcy proceedings. This, for example, could occur if an issuer were to engage in other business activities.

[31] Rating agencies also evaluate the quality of the servicer in connection with its responsibilities to manage and maintain the payment stream on the underlying assets. In addition, rating agencies evaluate the capability of the trustee in performing its duties.

[32] The "pass-through" and "pay-through" payment structures are described *supra* note 21.

secured loan,[33] that the pooled assets generally be representative of the sponsor's portfolio, and that the financing's servicer remit the cash flows from the financing's assets to the trustee within forty-eight hours.

Once a financing is rated, rating agencies typically monitor the financing's performance. Downgrades of financings have been infrequent, with most occurring as a result of downgrades in the ratings of providers of credit support. The Commission is not aware of any rated structured financing defaulting on its fixed-income securities.[34]

C. The Application of the Investment Company Act to Structured Financings

Despite the size of the structured finance market, its growth and development has been constrained by the Act. Structured financings meet the definition of investment company under section 3(a) because they issue securities and are primarily engaged in investing in, owning, or holding securities.[35] These financings, however, are unable to operate under the Act's requirements.[36] Accordingly, to be offered in the United States, a structured financing must either be organized to come within one of the exceptions to the definition of investment company under the Act or seek exemptive relief from the Commission.[37]

There are only two exceptions that are particularly relevant to private sector structured financings: sections 3(c)(5) and 3(c)(1).[38] Section 3(c)(5) excepts:

> [a]ny person who is not engaged in the business of issuing redeemable securities * * * and who is primarily engaged in one or more of the following businesses: (A) purchasing or otherwise acquiring notes, drafts, acceptances, open accounts receivable, and other obligations representing part or all of the sales price of merchandise, insurance, and services; (B) making loans to manufacturers, wholesalers, and retailers of, and to prospective purchasers of, specified merchandise, insurance, and services; and (C) purchasing or otherwise acquiring mortgages and other liens on and interests in real estate.

Section 3(c)(5) was intended to except issuers engaged primarily in the factoring, discounting, or real estate businesses.[39] Many structured financings, however, rely on this exception due to its broad statutory language. A number of no-action letters address whether an issuer is primarily engaged in one of the businesses enumerated in section 3(c)(5).[40]

Under these letters, issuers relying on subparagraphs (A) or (B) of section 3(c)(5) must primarily hold receivables, loans to refinance receivables, or loans to manufacturers made in connection with the purchase of specified merchandise and services.[41] Many non-mortgage financings whose assets meet this criteria, such as those backed by automobile loans, most credit card account receivables, and equipment leases, rely on subparagraphs (A) and (B). No-action assurance has been declined where an issuer's assets are not related to the purchase or sale of specified merchandise, insurance, or services.[42] Financings backed by general purpose commercial loans, consumer loans, or corporate bonds typically are unable to rely on subparagraph (A) or (B).

Many issuers of mortgage-backed securities and similar products rely on subparagraph (C) of section 3(c)(5). Under no-action letters, an issuer relying on this provision must invest at least fifty-five percent of its assets in mortgages and other liens on and interests in real estate ("qualifying interests"). An additional twenty-five percent of the issuer's assets must be in "real estate related assets."[43]

Qualifying interests have been interpreted to include fee interests, leaseholds, interests fully secured by mortgages solely on real estate, and so-called "whole pool certificates" issued by FNMA, GNMA or FHLMC (i.e., certificates that represent the entire ownership interest in a particular pool of mortgages).[44] So-called "partial pool certificates" issued by these agencies (i.e., certificates representing less than the entire ownership interest in a particular pool of mortgages) have not been considered to be qualifying interests, although they may be treated as real estate related assets for purposes of the twenty-five percent test.[45]

Structured financings that cannot rely on section 3(c)(5) may rely on section 3(c)(1), the private investment company exception. This exception, however, is limited to issuers that do not engage in public offerings and whose outstanding securities (other than short-term paper) are beneficially owned by not more than 100 persons.[46]

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[33] Structuring the financing as a "true sale" reduces the risk that the sponsor's insolvency will affect the issuer's payments to investors. Sponsors not subject to the Bankruptcy Code, such as banks and savings and loan associations, may be permitted to pledge assets to the issuer.

[34] Unrated financings, by contrast, have experienced defaults. The largest and most notable occurred in 1985 when Equity Program Investment Corporation and certain of its affiliates defaulted on approximately $1.4 billion in mortgages and privately placed mortgage-backed securities. For a discussion of the facts underlying the EPIC default, see EPIC Mortgage Ins. Litig., 701 F. Supp. 1192 (E.D. Va 1988), *aff'd in part, rev'd in part, sub nom. Foremost Guaranty Corp. v. Meritor Sav. Bank*, 910 F.2d 118 (4th Cir. 1990).

[35] Financial instruments generated in commercial transactions generally have been considered to be securities for purposes of the Act. *See, e.g.*, SEC, Report on the Public Policy Implications of Investment Company Growth, H.R. Rep. No. 2337, 89th Cong., 2d Sess. 238–39 (1966) (stating that notes representing the sales price of merchandise, loans to manufacturers, wholesalers, retailers and purchasers of merchandise or insurance, and mortgages and other interests in real estate are securities for purposes of the Act).

[36] For example, section 17(a) prohibits certain persons affiliated with a registered investment company from selling securities and other property to the investment company. 15 U.S.C. 80a-17(a). In a structured financing, this section would prohibit a sponsor's sale of assets to the issuer, as well as any substitution of assets by the sponsor.

[37] As discussed *supra* note 6, most financings sponsored by the federal government or by government sponsored enterprises are exempt under section 2(b).

[38] Other exceptions may be available for a limited number of private sector structured financings. *See, e.g.*, Investment Company Act sections 3(c)(3), (4), and (6); 15 U.S.C. 80a-3(c)(3), (4), & (6). *See also infra* note 46.

[39] See authorities cited *supra note* 6. *See also* S. Rep. No. 184, 91st Cong., 1st Sess. 37 (1969); H.R. Rep. No. 1382, 91st Cong., 2d Sess. 17 (1970).

[40] Structured financings meet the first portion of section 3(c)(5) because they do not issue redeemable securities.

[41] *See, e.g.*, Ambassador Capital Corporation (pub. avail. Oct. 6, 1986) (no-action position taken with respect to issuer holding airline credit card account receivables); Days Inn of America, Inc. (pub. avail. Dec. 30, 1988) (no-action position taken with respect to issuer holding franchise fee receivables).

[42] *See, e.g.*, World Evangelical Development Ltd. (pub. avail. Apr. 5, 1979) (no-action position declined where entity would issue general purpose commercial loans); Educational Loan Marketing Associations, Inc. (pub. avail. Feb. 4, 1986) (no-action position declined where entity would issue debt secured by the repayment of student loans financed by proceeds from the debt offering).

[43] This percentage may be reduced to the extent that more than 55% of the issuer's assets are invested in qualifying interests. *See, e.g.*, Greenwich Capital Acceptance, Inc. (pub. avail. Aug. 8, 1991); United Bankers, Inc. (pub. avail. Mar. 23, 1988). Generally, there are no restrictions on the investment of the remaining 20% of the issuer's assets. *See, e.g.*, NAB Asset Corp. (pub. avail. June 20, 1991).

[44] *See, e.g.*, United Bankers, Inc., *supra* note (fee interests); Health Facility Credit Corp. (pub. avail. Feb. 6, 1985) (leaseholds); Medidentic Mortgage Investors (pub. avail. May 23, 1984) (mortgages); American Home Finance Corp. (pub. avail. Apr. 9, 1981) (GNMA whole pool certificates).

[45] *See* Nottingham Realty Securities, Inc. (pub. avail. Apr. 19, 1984). The Division has reasoned that agency whole pool certificates should be considered qualifying interests because holders of these certificates generally have the same economic experience as an investor who purchases the underlying mortgages directly. Conversely, the Division has concluded that an investment in agency partial pool certificates is an investment in the securities of the issuer, rather than an investment in the underlying mortgages, and accordingly, should not be considered a qualifying interest.

[46] Legislation has been introduced in Congress that would, among other things, create a new

Continued

Some structured financings have obtained exemptive orders from the Commission under section 6(c), the Act's general exemptive provision. Most of the orders have concerned structured financings whose assets consisted primarily of partial pool certificates and other mortgage-related assets that are not considered to be qualifying interests under section 3(c)(5)(C).[47] These orders have been based, in part, on the legislative purpose underlying the Secondary Mortgage Market Enhancement Act of 1984 ("SMMEA").[48] In adopting SMMEA, Congress contemplated that the Commission would provide appropriate administrative relief if the Act unnecessarily hindered the development of the secondary mortgage market.[49] The Commission has issued approximately 125 orders concerning mortgage-related financings.[50]

In general, the orders have required, among other things, that (i) fixed-income securities sold to the public be rated in one of the two highest categories by at least one rating agency; (ii) substitution of assets be limited both quantitatively and qualitatively; [51] (iii) the assets be held by an independent trustee qualified under the Trust Indenture Act of 1939 (the "Trust Indenture Act") [52] who has a first priority perfected security interest or lien in the collateral; (iv) the servicer not be affiliated with the trustee; and (v) the issuer be audited annually to determine that the cash flow is sufficient for payment of principal and interest. These conditions generally parallel requirements prescribed by rating agencies.[53]

The Commission also has granted exemptive relief under sections 6(c) and 6(e) [54] for financings related to the federal government loan sales program.[55] Under this program, the federal government sold portions of the loan portfolios of certain government agencies during the late 1980's.[56] While some of these sales were excepted under section 3(c)(5), others could not have been completed without exemptive relief. A total of seven financings either received exemption from most provisions of the Act, including the registration requirements, or registered as closed-end management investment companies and received exemption from much of the Act.[57] The conditions imposed in those orders generally were similar to those required for exempting mortgage-related financings.[58]

D. The Effects of the Regulatory Structure

As a practical matter, the Act treats similar types of structured financings very differently. Some structured financings are subject to the Act's requirements, while others are excepted entirely, depending solely on the assets underlying the financing. Most structured financings backed by consumer receivables, for example, are excepted from the Act under section 3(c)(5). Structured financings backed by general purpose loans, on the other hand, are not excepted and cannot be sold publicly in the United States, even though the financing may be similar to those qualifying for an exception or receiving exemptive relief. This regulatory framework ignores both the structure and operation of structured financings, and the credit quality of securitized assets.[59] It also enforces a distinction that does not reflect the economic reality that any asset with a relatively predictable cash flow is capable of being securitized in a generally uniform manner.

The differing regulatory treatment under the Act has adversely affected the development of the structured market. According to market participants, the most widely accepted types of structured financings are those sold on the domestic public market, while financings whose distribution is limited to private placements or to overseas markets have lagged in development. In addition, United States investors are denied the opportunity to purchase high-quality securities issued by certain types of structured financings. Similarly, sponsors of financings that cannot be offered publicly in the United States are prevented from diversifying and expanding their investor base.

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section exception for issuers whose securities are held exclusively by sophisticated or "qualified" purchasers, as defined by rule. If adopted, structured financings could rely on this exception so long as their security holders consist of "qualified" purchasers. Small Business Incentive Act of 1992, S. 2518, 102d Cong., 2d Sess. (Apr. 2, 1992); H.R. 4938, 102 Cong., 2d Sess. (Apr. 9, 1992). *See Hearings on the Small Business Incentive Act of 1992*, 102d Cong., 2d Sess. (Mar. 26, 1992).

[47] *See, e.g.*, Mortgage Bankers Financial Corp. I, Investment Company Act Release Nos. 16458 (June 28, 1988), 53 FR 25226 (July 5, 1988) (Notice of Application) and 16497 (July 25, 1988), 41 SEC Docket 814 (Aug. 9, 1988) (Order); Shearson Lehman CMO, Inc., Investment Company Act Release Nos. 15796 (June 11, 1987), 52 FR 23246 (June 18, 1987) (Notice of Application) and 15852 (July 2, 1987), 38 SEC Docket 1403 (July 21, 1987) (Order).

[48] Secondary Mortgage Market Enhancement Act of 1984, Pub. L. No. 98-440, 98 Stat. 1689 (1984). Congress enacted SMMEA in an effort to expand the participation of the private sector in the secondary mortgage market in response to concerns that GNMA, FNMA, and FHLMC would not be able to meet future demands for mortgage credit.

[49] *See* S. Rep. No. 293, 98th Cong., 2d Sess. 9 (1983) (while the Senate Committee on Banking, Finance and Urban Affairs considered whether the Act should be amended to except issuers investing in certain mortgage-backed securities from the definition of investment company, the Committee reported legislation without such an exception in light of the Commission's administrative flexibility).

[50] *See supra* note 47.

[51] For example, the orders generally have permitted substitution of pooled assets, provided, among other things, that the new assets be of equal or better credit quality than the replaced assets, and that the new assets have similar payment terms. In addition, some orders have limited substitution to no more than 40% of the aggregate face amount of the assets initially deposited (with no substitution of substituted assets). *See, e.g.*, Mortgage Bankers Financial Corp. I, *supra* note 47 (with respect to the substitution of pooled GNMA, FNMA, and FHLMC certificates).

[52] The Trust Indenture Act sets forth requirements regarding, among other things, the eligibility and qualifications of trustees, the preferential collection of claims against the issuer, and reporting obligations. The Trust Indenture Act also addresses the duties of trustees when an issuer defaults.

[53] The exemptive orders also have imposed conditions limiting the sale of residual interests.

[54] 15 U.S.C. 80a-6(e). Section 6(e) provides that if, in connection with any order under section 6 exempting any investment company from the registration provisions of section 7 [15 U.S.C. § 80a-7], the Commission finds it appropriate that certain provisions of the Act pertaining to registered investment companies be applicable in respect of such company, the specified provisions will apply to that company as though it were a registered investment company. *See, e.g.*, Community Program Loan Trust No. 1987 A, Investment Company Act Release Nos. 15900 (July 29, 1987), 52 FR 28628 (July 31, 1987) (Notice of Application) and 15948 (Aug. 24, 1987), 39 SEC Docket 65 (Sept. 8, 1987) (Order).

[55] See, e.g., Community Program Loan Trust No. 1987 A, *supra* note 54.

[56] *See* Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99-509, 100 Stat. 1874; Omnibus Budget Reconciliation Act of 1987, Pub. L. No. 100-203, 101 Stat. 1330 (1987).

[57] Some issuers registered as investment companies because of tax advantages. *See, e.g.*, College and University Faculty Loan Trust, Investment Company Act Release Nos. 15903 (July 31, 1987), 52 FR 28890 (Aug. 4, 1987), (Notice of Application) and 15990 (Sept. 18, 1987), 39 SEC Docket 348 (Sept. 29, 1987) (Order).

[58] The only other exemptive order issued with respect to structured financings involved trusts established by the Government of Israel to facilitate the financing of its housing program to Soviet refugees. Each trust issued non-redeemable pass-through certificates backed by a single promissory note, the payment of which was guaranteed by the full faith and credit of the United States. *See* Government of Israel, Investment Company Act Release Nos. 18047 (Mar. 18, 1991), 56 FR 11806 (Mar. 20, 1991) (Notice of Application) and 18069 (Mar. 28, 1991), 48 SEC Docket 943 (Apr. 2, 1991) (Order).

[59] In response to the Study Release, *supra* note 1, one commenter noted that "issuers of asset-backed securities whose underlying assets are credit card receivables have restrictions limiting the percentage of their assets that can be represented by cash advances. In many cases, if the percentage of cash advance receivables becomes too great, the transaction is liquidated and investments are paid earlier than expected * * *. From the point of view of the investor, [however], there is no difference between the two types of credit card receivables." Letter from Cleary, Gottlieb, Steen & Hamilton to Jonathan G. Katz, Secretary, SEC 62-63 (Oct. 12, 1990) at File No. S7-11-90 [hereinafter Cleary, Gottlieb Study Comment].

The regulatory barriers presented by the Act also have broader economic implications. Many sectors of the economy are prevented from fully using structured finance to address capital needs. When the Act does not apply, structured finance has proved effective in increasing the availability of certain financial assets, often at lower costs. For example, structured finance has increased the availability of home mortgage funding by enabling banks and savings and loan associations to package their loans and sell them in the secondary market.

In the long-term, private sector structured finance may prove beneficial as a means of capital formation with respect to small businesses. For example, general purpose loans to small businesses could be securitized in a manner very similar to residential mortgages. Suppliers and distributors also could securitize small business payables. Finally, small businesses themselves could pool and sell their own assets, such as receivables from customers.[60]

II. Discussion

A. Proposed Rule 3a–7

Proposed rule 3a–7 would remove impediments caused by the Act by excluding any structured financing, regardless of the type of assets securitized, from the definition of investment company, provided certain conditions are satisfied. It would obviate the need for sponsors to attempt to fit their financings within the confines of section 3(c)(5)—a section that was not intended to cover these arrangements. The proposal also would eliminate the need to obtain exemptive orders covering specific structured financings.

Proposed rule 3a–7 would have four conditions:

(i) Issuers must primarily issue fixed-income securities, with the holders of all such securities entitled to receive payments based on the cash flow from pooled assets;

(ii) Securities offered to the public must be fixed-income securities (as defined under the rule) that are rated at the time of sale in one of the two highest categories by at least one rating agency;

(iii) The issuer must hold substantially all assets to maturity, except that assets may be substituted or added consistent with the interests of existing investors; and

(iv) Assets, cash flows, and other property of the issuer must be maintained in the custody of an independent trustee, except to the extent necessary to the financing's operations.

These conditions, which are discussed in greater detail below, are intended to recognize the structural and operational distinctions between registered investment companies and structured financings and to address investor protection concerns by codifying requirements currently imposed by the market itself. The conditions also are intended to accommodate future innovations in the structured finance market, consistent with investor protection.

1. Scope of the Rule

Proposed rule 3a-7 would exclude from the definition of investment company any person that is in the business of acquiring and holding eligible assets, and does not issue redeemable securities.[61] The proposed rule is intended to exclude only structured financings from the Act and to preclude excluded issuers from acting in a manner similar to registered investment companies. Only issuers whose sole business is to hold a pool of eligible assets and to issue non-redeemable securities could rely on the exclusion.

Proposed rule 3a-7 would be based on the structure and operation of the financing and not on the type of assets securitized, provided all of the issuer's assets consist of eligible assets. Proposed paragraph (b)(1) defines the term "eligible assets" generally to include obligations that have scheduled cash flows.[62] This requirement is intended to ensure that securitized assets produce cash flows of the type that may be statistically analyzed by rating agencies and investors.

2. Conditions

(i) Securities Based on Underlying Cash Flows

Proposed paragraph (a)(1) would require issuers relying on the rule to issue primarily fixed-income securities, interest-only ("IO") securities, principal-only ("PO") securities, or other securities with similar characteristics, all of which entitle their holders to receive payments that depend on cash flows generated by the underlying pool. The proposed rule is intended to provide issuers with great flexibility in choosing the types of debt or debt-like securities to issue.[63] Structured financings presently issue a variety of securities based on cash flows from the underlying pool, and the proposal is not intended to limit that industry practice.[64]

By requiring payment on the securities to be based on the cash flows from the underlying pool, proposed paragraph (a)(1) is intended to reach the predominate types of structured financings that are currently offered.[65] The provision would permit an excluded financing to use credit enhancements, such as letters of credit or financial guaranty insurance, to pay investors if the cash flow from pooled eligible assets is insufficient to meet the issuer's obligations.

(ii) Securities Offered to the Public Must Be Fixed-Income Securities Rated in the Two Highest Investment Grades

Paragraph (a)(2) of the proposed rule would require that all securities offered to the public be fixed-income securities that are rated, at the time of sale by the issuer or any underwriter acting on the issuer's behalf, in one of the two highest categories by at least one nationally recognized statistical rating organization, or "rating agency."[66]

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[60] *See Hearings on the Small Business Incentive Act of 1992, supra note* 46 (testimony of Myron Glucksman, Vice President, Structured Finance Division, Citicorp Securities Markets, Inc.).

[61] In addition, issuers seeking to rely on the rule may not issue debt securities that entitle holders to receive principal and accrued interest within a short period of time after demand (i.e., within 14 days). Securities with a short-term demand feature appear more like redeemable equity securities, and investors could confuse the securities with those issued by open-end management investment companies.

[62] Under proposed paragraph (b)(1), eligible assets also would include assets that serve solely to support the credit of the securities (e.g., letters of credit). *See supra* note.

[63] *See supra* note 21. As discussed below, however, IO securities, PO securities, and securities with similar characteristics could not be sold to the public.

[64] In defining fixed-income securities, proposed subparagraph (b)(2)(i) seeks to delineate the methods currently used to calculate interest on a structured financing's securities. The Commission specifically requests comment on whether this approach may limit unnecessarily the types of fixed-income securities that may be offered in the future, and whether an alternative approach would be appropriate.

[65] Structured financings using a "market value" structure, where payment on the financing's securities is derived from the aggregate market value of the pooled assets, would not be able to rely on proposed rule 3a-7. Market value transactions present issues that differ from financings utilizing the cash flow structure. For example, because investors are paid based on the aggregate market value of the assets, rather than cash flows generated from the assets, asset valuation concerns differ with respect to the two types of structures. Accordingly, these structures should not be subject to the same regulatory treatment as cash flow transactions. Since the use of the market value structure has diminished in the last few years, this limitation should not significantly affect the structured finance market. Of course, financings using the market value structure may sell their securities in private placements or overseas, or may apply for exemptive relief.

[66] The rating agency could not be an affiliated person of the financing's sponsor, servicer, trustee, or provider of credit support.

Securities that are not rated in the two highest categories, or that are unrated, may be sold only to qualified institutional buyers, as defined in rule 144A under the Securities Act of 1933,[67] or to an affiliated person of the issuer.[68]

This provision recognizes that rating agencies already play an integral role in the structured finance market.[69] Investors generally rely on rating agencies to perform evaluations of credit risk. Of course, the Act generally is not intended to protect investors against credit risk. Nevertheless, due to the nature of structured financings, rating agency evaluations appear to address most of the Act's concerns about abusive practices, such as self-dealing and overreaching by insiders, misvaluation of assets, and inadequate asset coverage. Determining whether a financing is structured appropriately has become increasingly difficult, due to the wide variety and growing complexity of these transactions. Rating agencies have been successful in analyzing various structures, without impeding the development of the structured finance market.[70] Accordingly, a rating requirement has been incorporated in the proposed rule. The Commission, however, requests comment on whether rating agencies should be subject to additional regulatory requirements and whether a rating requirement is necessary in proposed rule 3a-7, and, if not, on what alternative bases the Commission should exclude financings from the Act.

Proposed subparagraph (a)(2) would require that securities offered to the public be rated in one of the two highest categories by at least one rating agency. Since most structured financings publicly offer only securities that are rated in one of these categories, this requirement should not materially affect the structured finance market. Some have argued, however, that a rating within one of the four highest categories (i.e., an investment grade rating) would address investor protection concerns, while providing greater flexibility for structured financings.[71] Accordingly, the Commission specifically requests comment on whether an investment grade rating requirement would be appropriate.

The Commission also requests comment on whether rule 3a-7 should require that excluded financings be rated by more than one rating agency. Although today most financings are rated by two or more rating agencies, the Commission is concerned that requiring two ratings would impose unnecessary costs.

Under proposed paragraph (a)(2), an issuer may sell to the public only fixed-income securities as defined under paragraph (b)(2) of the proposed rule. As proposed, the term "fixed-income securities" generally includes any debt obligation or instrument with debt-like characteristics, other than IO and PO securities or other securities with similar characteristics. Thus, an issuer relying on the proposed rule would be precluded from offering to the public IO and PO securities and any other securities with similar characteristics.

IO and POs securities are highly volatile, with payment subject to extreme prepayment and interest rate risks.[72] These securities may be highly rated, since prepayment and interest rate risks are not addressed in a security's rating.[73] Unsophisticated investors, however, may not appreciate the risks associated with IO and PO securities, and sales of these instruments to such investors may raise suitability concerns. In addition, financings that offer these securities arguably may represent a type of complex capital structure that the Act was intended to address.[74] Accordingly, the Commission proposes that rule 3a-7 not encompass structured financings that sell IO and PO securities to the public.[75] The Commission requests specific comment, however, on whether this restriction is appropriate.[76]

The proposed rule would permit any class of securities, without regard to the nature of the securities or their rating, if any, to be sold to qualified institutional buyers as defined in rule 144A, or to affiliated persons of the issuer. Presently, subordinate classes of structured financings, which typically are not highly rated, if rated at all, and interests in residual cash flows [77] are

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[67] 17 CFR 230.144A. Under rule 144A, a qualified institutional buyer generally includes institutional investors, such as employee benefit plans, insurance companies, banks, and investment companies, that own or invest on a discretionary basis at least $100 million in securities.

[68] Section 2(a)(3) of the Act defines affiliated person of another person as:

(A) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting securities of such other person; (B) any person 5 per centum or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person; (C) any person directly or indirectly controlling, controlled by, or under common control with, such other person; (D) any officer, director, partner, copartner, or employee of such other person; (E) if such other person is an investment company, any investment adviser thereof or any member of an advisory board thereof; and (F) if such person is an unincorporated investment company not having a board of directors, the depositor thereof.

15 U.S.C. 80a-2(a)(3).

[69] In adopting SMMEA, Congress expressly recognized the role of rating agencies in the structured finance market, by including in the definition of "mortgage related security" (the type of security that qualifies for the special treatment conferred by SMMEA) a requirement that the security be rated in one of the two highest rating categories by at least one rating agency. *See supra* note 47.

[70] *See supra* note and accompanying text.

[71] In response to the Study Release, *supra* note 1, m most commenters supporting an exemption for structured financings suggested a rating in one of the two highest categories. *See, e.g.*, Letter from Financial Security Assurance Inc. to Jonathan G. Katz, Secretary, SEC 4 (Oct. 9, 1990), File No. S7-11-90; Merrill Lynch Study Comment, *supra* note 75. A few commenters favored an investment grade standard. *See, e.g.*, Letter from the American Bar Association, Section of Business Law, 1940 Act Structured Finance Task Force to Jonathan G. Katz, Secretary, SEC 20-21 (Oct. 16, 1990), File No. S7-11-90.

[72] J.P. Morgan, for example, recently incurred a $50 million loss on its IO securities as a result of a high rate of prepayments on the underlying mortgages. *J.P. Morgan Had $50 Million in Loss in Trading Mortgage-Backed Securities*, Wall St. J., Mar. 10, 1992, at A4. The Federal Financial Institutions Examination Council adopted a supervisory policy statement that includes restrictions governing the acquisition of IO and PO securities by national banks due to the volatility of these instruments. Comptroller of the Currency, Administrator of National Banks, Supervisory Policy Statement on Securities Activities, Banking Circular No. 228 (Rev.) (Jan. 10, 1992).

[73] *See supra* note 28.

[74] The legislative history of the Act describes investment companies that offered multiple classes of debt with different preferences and priorities, making it difficult for the ordinary investor to understand the rights and risks associated with his investment. *See* SEC, Investment Trusts and Investment Companies, H.R. Doc. 707, 75th Cong., 3d. Sess. pt. 1 at 28-29 (1939); SEC, Investment Trusts and Investment Companies, H.R. Doc. No. 279, 76th Cong., 1st Sess. pt. 3 at ch. V (1939). Section 18 of the Act addresses these concerns by imposing restrictions on the offering of debt securities by registered investment companies. 15 U.S.C. 80a-18.

[75] In response to the Study Release, *Supra* note 1, some commenters indicated that sales of IO securities to the public should be restricted because of their extreme volatility. *See* Cleary, Gottlieb Study Comment, *supra* note 59; Letter from Merrill Lynch & Co., Inc. to Jonathan G. Katz, Secretary, SEC IX-13 (Oct. 18, 1990), File No. S7-11-90 [hereinafter Merrill Lynch Study Comment].

[76] The proposed rule also would prohibit the public sale of any other securities that are highly volatile and pose risks that unsophisticated investors may not appreciate. For example, residual interests structured as debt present similar concerns to IO and PO securities and, therefore, could not be sold to the public. Of course, IOs and POs and securities with similar characteristics could be sold to qualified institutional buyers and affiliated persons of the issuer. The Commission also requests comment on this aspect of the proposed rule.

[77] Residual interests typically are structured as equity and are not rated. These interests are highly volatile instruments, with payment depending in part on the effects of prepayments on the underlying assets and/or changes in the interest rate(s) on the cash flow. Residual interests bear risks that are significantly different from those attending fixed-income securities. In the event of self-dealing or overreaching by insiders, for example, these interests (as equity) would be the first to bear any losses. Residual interests usually are retained by the sponsor or sold to institutional investors who purchase them for hedging purposes.

placed with highly sophisticated investors. These investors conduct their own due diligence reviews prior to investing, and are capable of evaluating on their own behalf whether the financing is structured so that they, as holders of subordinate securities, will receive full and timely payment.

(iii) Limited Management

Proposed subparagraph (a)(3) would require issuers to hold substantially all eligible assets, other than any form of external credit support (e.g., letters of credit), to maturity. With four exceptions, issuers relying on the proposed rule would be required to hold to maturity (i.e., the termination of the asset according to its terms) [78] substantially all assets initially deposited in the pool as well as any assets added later.[79]

Proposed subparagraph (a)(3)(i) is intended to permit asset substitution, provided the new assets are of the same type and at least as high in credit quality as those initially deposited in the pool. This provision is intended to permit the replacement of assets when necessary to the financing's operations,[80] but to prevent any change in the financing's assets to the detriment of investors.

Proposed subparagraph (a)(3)(ii) would allow financings to continue the practice of using a defeasance mechanism to enable issuers to meet their obligations. This mechanism permits the trustee to sell assets and use the proceeds to purchase Government securities,[81] usually Treasury bills, that provide sufficient cash flows to pay holders of the financing's fixed-income securities.

Proposed subparagraph (a)(3)(iii) would permit assets to be added to the financing, provided these assets do not result in a downgrading of the rating of the financing's outstanding fixed-income securities. The new assets would not be required to be of the same type as those already in the pool.[82] This provision would permit financings to add assets to support the issuance of new fixed-income securities or to support obligations already outstanding.[83] The provision also would allow financings to continue the practice of reinvesting idle cash in highly rated short-term securities.[84]

Proposed subparagraph (a)(3)(iv) would permit issuers to dispose of assets that have not reached maturity only in connection with a financing's termination.[85] In all other circumstances, assets may not be removed from the underlying pool unless they meet the requirements of subparagraphs (a)(3)(i) or (ii).

The requirements of paragraph (a)(3) are intended to limit the amount of management permitted in structured financings without unduly restricting their operations. The provision recognizes that most financings require some form of management and that more recent structures contemplate somewhat greater flexibility in the management of pooled assets.[86] At the same time, proposed paragraph (a)(3) seeks to ensure that any changes in a financing's assets would not adversely affect the holders of the financing's outstanding fixed-income securities, and that excluded financings would not be managed to the same extent and in the same manner as management investment companies.

The Commission requests comment on whether paragraph (a)(3) achieves its intended purposes by permitting the proposed types of asset turnover. The Commission also requests comment on whether other restrictions relating to the management of assets should be included, and if so, what these restrictions should be. For example, it may be appropriate to include a general prohibition on the trading of assets for profit.[87]

The Commission also requests comment on alternative approaches to proposed paragraph (a)(3). The Commission, for example, could limit management objectively by requiring that a specified percentage, for example, sixty percent, of the aggregate amount of pooled eligible assets to be held to maturity.[88] A specific percentage limitation, however, could unnecessarily limit flexibility to respond to the specific types of financings through the no-action process.

(iv) The Independent Trustee

Proposed paragraph (a)(4) would require that all eligible assets, cash flow derived from such assets, and any other property of the issuer not needed for the financing's operations, be maintained in a segregated account by a trustee meeting certain requirements.[89] All property of the issuer at the time the financing is established, including pooled eligible assets (or legal documentation of interest in such assets) and any documents relating to credit support arrangements, would be deposited with the trustee. All subsequently acquired property, including all cash flows, would be transferred to the trustee within a reasonable period from the time of receipt.[90] Property necessary to the financing's operations (*e.g.*, for servicing) could be removed from the segregated account, provided that the property is returned promptly to the trustee once it is no longer needed.[91]

Proposed paragraph (a)(4) is intended to ensure the safekeeping of the issuer's assets. The provision generally is intended to codify industry practice, except that it would prohibit any servicer from commingling the financing's cash flows with its own

[78] Thus, an asset would be considered to have reached maturity when the asset is prepaid in accordance with its terms.

[79] The requirement that substantially all eligible assets be held to maturity is intended to permit a limited amount of additional management flexibility, as determined through the no-action process.

[80] Substitution typically occurs when assets are in default or subject to imminent default, or when they do not conform to the representations and warranties made at the time the financing is established.

[81] Under section 2(a)(16) of the Act, the term "Government security" includes any security issued or guaranteed as to principal or interest by the United States, or by a person controlled or supervised by and acting as an instrumentality of the United States Government pursuant to Congressional authority, or any certificate of deposit of the foregoing. 15 U.S.C. 80a-2(a)(16).

[82] For example, in asset-backed commercial paper programs, discussed *supra* note 26 , short-term money market instruments may be added to a pool of credit card account receivables.

[83] See *supra* notes 25–26 and accompanying text.

[84] Reinvestment would be limited to eligible assets as defined in proposed paragraph (b)(1). The Commission seeks specific comment on whether this requirement would limit unnecessarily a financing's reinvestment options.

[85] In the course of winding up its operations, an issuer may dispose of a significant portion of its assets prior to maturity. Excluded financings in the process of terminating their operations would continue to be in compliance with proposed subparagraph (a)(3)(ii), provided the financing is concluded within a reasonable period of time in light of the structure of the financing, the assets involved, and prevailing market conditions.

[86] *See supra* notes 24–26 and accompanying text.

[87] *See* Letter of Citicorp to Jonathan G. Katz, Secretary, SEC (Oct. 10, 1990) File No. S7–11–90 (responding to the Study Release, *supra* note).

[88] This approach would be consistent with prior exemptive orders. *See supra* note 51. More restrictive limits (*e.g.*, seventy percent, seventy-five percent, or eighty percent) also may be appropriate.

[89] In light of the diversity of assets used in structured financings, the Commission requests specific comment on whether the physical transfer of eligible assets to the trustee would present any difficulties for particular types of financings, and if so, what alternative approach would be appropriate to accommodate these arrangements.

[90] Whether the property is transferred within a reasonable period of time would depend on a number of factors, including the type of property transferred, the circumstances surrounding the transfer, and industry practice.

[91] For example, it may be necessary to remove documentation for a specific loan to collect delinquent payments; the documentation would be returned to the trustee following collection.

assets.[92] Investor protection concerns outweigh any benefit resulting from the commingling of a servicer's assets with those of the issuer.

Proposed paragraph (a)(4) would require the trustee to be a bank that meets the requirements of section 26(a)(1) of the Act governing trustees of unit investment trusts.[93] The trustee also could not be affiliated with the other participants in the financing.[94] Absent this prohibition, one entity could act in all capacities of the financing, with no independent party safeguarding the financing's assets.[95] Virtually all trustees are unaffiliated with the other parties involved in a structured financing, and this requirement would not depart from industry practice.

Proposed paragraph (a)(4) also would require the trustee to execute an agreement stating that it will not resign until the structured financing has been completely liquidated or until a successor trustee has been designated. The agreement additionally would provide that the sponsor or an agent of the sponsor keep a record of the financing's security holders.[96] These requirements are both consistent with industry practice and are imposed under the Act with respect to registered unit investment trusts.[97]

Proposed paragraph (a)(4) would not specify other duties for the trustee. It would not require the trustee to monitor the issuer's obligations to investors or to represent the interests of investors if the financing defaults. These requirements are imposed under the Trust Indenture Act,[98] which applies to many publicly offered financings. Structured financings not subject to the Trust Indenture Act often are structured to conform to the requirements of that Act. The Commission specifically requests comment on whether proposed rule 3a-7 should specify other duties for trustees, including whether any portion of the Trust Indenture Act's requirements should be made applicable to financings that are not subject to that Act.

B. Amending Section 3(c)(5)

The Commission also is requesting comment on whether section 3(c)(5) should be amended, either to expand or narrow its scope. As noted above, section 3(c)(5) was enacted to except commercial finance and mortgage companies from the Act. The activities of those entities has evolved considerably since 1940, however. In addition, a broad range of other issuers, including structured financings, not anticipated in 1940 [or 1970, when the exception was amended] rely on the exception.[99]

According to one trade group, traditional distinctions between companies engaged in factoring, sales financing, and other types of commercial financing activities no longer exist. Today, a finance company may be engaged in several kinds of financing activities or variations thereof.[100] Moreover, the trade group has suggested that current interpretations of section 3(c)(5) may unduly constrict legitimate financing activities.[101]

Others have suggested that the section should be narrowed, to prevent structured financings and other issuers from relying on it.[102] Of course, even assuming adoption of proposed rule 3a-7, absent an amendment to section 3(c)(5), structured financings will continue to be subject to somewhat disparate treatment. Structured financings that come within the section will be excepted from the Act, while other financings will have to meet the requirements of the proposed rule (although these requirements largely codify present practice).

In addition, upon adoption of proposed rule 3a-7, the no-action position of the Commission's Division of Investment Management with respect to the treatment of whole pool agency certificates will be withdrawn.[103] Both whole pool and partial pool certificates, which are traded in capital markets, are more in the nature of securities than real estate, and should not be deemed to be interests in real estate. Moreover, with the adoption of proposed rule 3a-7, withdrawal of the position should not affect structured financings backed by whole pool agency certificates. The Commission, however, requests comment on the withdrawal of this position.

III. Cost/Benefit of Proposed Action

Proposed rule 3a-7 would remove an unnecessary and unintended barrier to the use of structured financings in all sectors of the economy, including the small business sector. Accordingly, it is intended to allow more sponsors to obtain the benefits of structured financings, including using these arrangements as sources of capital. It also would obviate the need for sponsors to spend unproductive time attempting to fit these arrangements within the confines of section 3(c)(5), or to obtain exemptive orders from the Commission.

The Commission anticipates that for virtually all structured financings and their sponsors, the cost of compliance with proposed rule 3a–7 would be minimal because the proposed rule essentially codifies industry practice. Comments are requested, however, on the above assessment of the costs and benefits associated with the proposed rule. Commenters should submit estimates for any costs and benefits perceived, together with any supporting empirical evidence available.

IV. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603 regarding

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[92] Rating agencies generally permit a servicer with an equal or higher rating as the financing's fixed-income securities to commingle the financing's cash flows with its own assets.

[93] 15 U.S.C. 80a-26(a)(1). Section 26(a)(1) also is incorporated in section 17(f) of the Act governing the qualifications of banks that serve as custodians for registered investment companies. 15 U.S.C. 80a-17(f).

[94] Rule 405 of the Securities Act of 1933 defines an "affiliate" of, or a person "affiliated" with, a specified person as "a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified." 17 CFR 230.405. Subject to the requirement that the trustee remain unaffiliated with the financing, the trustee would be free to purchase the financing's securities.

The Trust Indenture Act prohibits an obligor and any person with a control relationship to the obligor from serving as the trustee for the obligor's securities. 15 U.S.C. 77jjj(a)(5).

[95] For example, banks may act as sponsors, servicers, and/or providers of credit support to structured financings.

[96] This requirement would not prevent the trustee, as an agent of the sponsor, from maintaining these records.

[97] Sections 26(a)(3) and 26(a)(4)(A) of the Act. 15 U.S.C. 80a-26(a)(3), -26(a)(4)(A).

The Commission considered but rejected proposing that the agreement include provisions in the effect set forth in sections 26(a)(2) and 26(a)(4)(B) of the Act, which also apply to unit investment trusts ("UITs"). 15 U.S.C. 80a-26(a)(2), -26(a)(4)(B). Section 26(a)(2) contains prohibitions on fees that would not be compatible with the fee structure used in structured financings, which generally are based on the cash flow generated by the pool. In addition, proposed rule 3a-7 would permit greater flexibility with respect to asset substitutions than that allowed UITs, causing a notice requirement, such as that in section 26(a)(4)(B), to be unduly burdensome.

[98] *See supra* note 52.

[99] See authorities cited *supra* notes 6 & 39.

[100] Memorandum accompanying Letter from Sidley & Austin, on behalf of the National Commercial Finance Association, to Jonathan G. Katz, Secretary, SEC (Oct. 9, 1990), File No. S7–11–90.

[101] *Id.*

[102] *See, e.g.*, Memorandum from the Investment Company Institute on the Regulation of Asset-Backed Arrangements under the Investment Company Act (undated), File No. S7–11–90.

[103] *See supra* note and accompanying text. The Division of Investment Management does not intend to recommend that the Commission commence enforcement action against structured financings previously established in reliance on this no-action position solely because the position has been withdrawn.

proposed rule 3a-7. The Analysis explains that the proposed rule is intended to remove an unnecessary and unintended barrier to the use of structured financings in all sectors of the economy, including the small business sector. The Analysis describes the present regulatory framework, under which a structured financing may be entirely exempt from the Act or subject to the Act, depending solely upon the assets securitized. A structured financing, however, is not able to operate under the Act's requirements. Thus, failing exclusion or exemption, it must be sold in private placements, or outside the United States. The Analysis explains that this result has impeded the development of the structured finance industry. The Analysis states that the costs of compliance with proposed rule 3a-7 would be minimal because the proposal essentially would codify industry practice. The Analysis also describes certain significant alternatives to the proposed rule considered by the Commission. A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Rochelle G. Kauffman, Esq., or Elizabeth R. Krentzman, Esq., both at Mail Stop 10-4, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

V. Statutory Authority

The Commission is proposing rule 3a-7 under the exemptive and rulemaking authority set forth in sections 6(c) and 38(a) [15 U.S.C. 80a-6(c), -37(a)] of the Investment Company Act of 1940. The authority citations for these actions precede the text of the actions.

VI. Text of Proposed Rule

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a-1 *et seq.*, 80a-37, 80a-39 unless otherwise noted:

2. By adding § 270.3a-7 to read as follows:

§ 270.3a-7 Certain issuers of asset-backed securities.

(a) Notwithstanding section 3(a) of the Act, any issuer who is engaged in the business of purchasing, or otherwise acquiring, and holding eligible assets and who does not issue redeemable securities or debt securities with a demand feature providing for payment within fourteen days of demand will not be deemed to be an investment company; *provided that:*

(1) The issuer primarily issues fixed-income securities, interest-only securities, principal-only securities or any other securities with similar characteristics, all of which entitle their holders to receive payments that depend on the cash flow from the eligible assets;

(2) All securities offered or sold to persons other than qualified institutional buyers, as defined in rule 144A under the Securities Act of 1933 [17 CFR 230.144A], or affiliated persons of the issuer are fixed-income securities that are rated, at the time of sale by the issuer or any underwriter thereof, in one of the two highest rating categories assigned debt obligations by at least one nationally recognized statistical rating organization that is not an affiliated person of the issuer or of any person involved in the organization or operation of the issuer;

(3) The issuer holds substantially all pooled eligible assets to maturity, except that it may:

(i) Substitute eligible assets for other eligible assets of the same type and of the same or higher credit quality;

(ii) Pursuant to a defeasance mechanism, substitute Government securities for eligible assets, provided such Government securities produce cash flows similar to those expected from the replaced asset;

(iii) Acquire additional eligible assets that do not result in a downgrading in the rating of the issuer's outstanding fixed-income securities; and

(iv) Dispose of any eligible assets in connection with the issuer's termination; and

(4) Eligible assets, cash flow derived from such assets, and any other property of the issuer, not needed at the time for the operation of the issuer's business, are maintained in a segregated account by a trustee that meets the requirements of section 26(a)(1) of the Act, that is not affiliated, as that term is defined in rule 405 under the Securities Act of 1933 [17 CFR 230.405], with the issuer or with any person involved in the organization or operation of the issuer, and that executes an agreement or instrument concerning the issuer's securities containing provisions to the effect set forth in sections 26(a)(3) and 26(a)(4)(A) of the Act.

(b) For purposes of this section:

(1) *Eligible assets* means obligations that require scheduled cash payments, such as notes, bonds, debentures, evidences of indebtedness, certificates of deposit, leases, installment contracts, interest rate swaps, repurchase agreements, guaranteed investment contracts, accounts receivable, chattel paper, cumulative preferred stock, guarantees, annuities, and participations or beneficial interests in any of the foregoing; and other assets that serve solely to support the credit of the issuer's securities, such as letters of credit, guarantees, and cash collateral accounts.

(2) *Fixed-income securities* means any securities that entitle the holder to receive:

(i) a stated principal amount and either:

(A) interest based on such principal amount calculated by reference to a fixed rate or an adjustable rate determined periodically by reference to an index that is generally recognized in financial markets as a reference rate of interest, through auctions among holders and prospective holders, or through remarketing of the security, or

(B) an amount equal to specified portions of the interest received on the assets held by the issuer;

provided that any interest determined as described in paragraphs (b)(2)(i)(A) and (B) of this section bears a reasonable relationship to a market rate of interest; or

(ii) a stated principal amount at maturity and no interest payments; but do not include interest-only securities or principal-only securities or any other securities with similar characteristics.

By the Commission.

Dated: May 29, 1992.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-13150 Filed 6-4-92; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 163

[Docket No. 86P-0297]

Cacao Products; Amendment of the Standards of Identity

AGENCY: Food and Drug Administration, HHS.

ACTION: Tentative final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing this tentative final rule to amend the U.S.

standards of identity for certain cacao products. The amendments will: (1) Provide for the use of safe and suitable nutritive carbohydrate sweeteners, neutralizing agents, and emulsifiers in cacao products; (2) revise the current milkfat content requirements for milk chocolate, buttermilk chocolate, skim milk chocolate, and mixed dairy product chocolates; (3) eliminate the current nonfat milk solids-to-milkfat ratios for certain cacao products; (4) revise the standards for coatings; and (5) update the language and format of the standards. This action is being taken principally in response to a citizen petition submitted by the Chocolate Manufacturers Association of the United States of America (CMA) and to comments received in response to a proposed rule that published in the **Federal Register** of January 25, 1989 (54 FR 3615). The amendments will promote honesty and fair dealing in the interest of consumers and, to the extent practicable, will achieve consistency with the Codex Alimentarius Commission (Codex) International Standards for Chocolate and for Cocoa Powders (Cocoas) and Dry Cocoa—Sugar Mixtures.

FDA is also requesting comments on the following issues: (1) Whether to provide for the use of any safe and suitable sweeteners in cacao products rather than limiting the sweeteners to nutritive carbohydrate sweeteners; (2) whether to provide for additional products in the standards for sweet cocoa, sweet chocolate, and milk chocolate coatings made with vegetable fat; (3) whether to revise the standards for breakfast cocoa, cocoa, and lowfat cocoa to achieve consistency with proposed definitions for nutrient content claims; and (4) whether to retain the provisions that prohibit the use of flavors that imitate chocolate, milk, or butter in cacao products. The agency seeks comment on whether these actions are appropriate, and whether they will promote honesty and fair dealing in the interest of consumers.

DATES: Written comments on section II.A. of this tentative final rule by July 6, 1992. The agency is proposing that any final rule that may be issued based upon this tentative final rule become effective on the date of publication of the final rule in the **Federal Register**. Written comments on section II.B. by August 4, 1992.

ADDRESSES: Submit written comments to the Dockets Management Branch, (HFA–305), Food and Drug Administration, room 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Center for Food Safety and Applied Nutrition (HFF–414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0106.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 25, 1989 (54 FR 3615), FDA published a proposed rule to amend the standards of identity for cacao products in 21 CFR part 163. The proposal responded to a citizen petition submitted by CMA. CMA requested that FDA amend the standards of identity for cacao nibs (§ 163.110), chocolate liquor (§ 163.111), breakfast cocoa (§ 163.112), sweet chocolate (§ 163.123), milk chocolate (§ 163.130), buttermilk chocolate (§ 163.135), skim milk chocolate (§ 163.140), and mixed dairy product chocolates (§ 163.145) to accomplish four major changes. The changes would: (1) Provide for the use of safe and suitable nutritive carbohydrate sweeteners in sweet chocolate and milk chocolate; (2) permit the use of specified neutralizing agents in the preparation of cacao beans and cacao nibs; (3) reduce the required minimum milkfat content of chocolate products and eliminate the current nonfat milk solids-to-milkfat ratio requirements; and (4) permit the use of safe and suitable emulsifying ingredients in addition to those currently specified.

Responding to the CMA petition to amend the cacao products standards, the agency proposed: (1) To replace the term "optional saccharine ingredients" with the term "safe and suitable nutritive carbohydrate sweeteners," thus permitting other sweeteners in addition to those currently specified, and to remove the quantitative limitations on the sweeteners used; (2) to amend the standards for cacao nibs, chocolate liquor, breakfast cocoa and, by cross-reference, sweet chocolate and milk chocolate to provide for the use of specified neutralizing agents; (3) to lower the milkfat content requirements from 3.66 percent to 3.39 percent and to eliminate the nonfat milk solids-to-milkfat ratio requirement in milk chocolate, buttermilk chocolate, skim milk chocolate, and mixed dairy product chocolates; and (4) to delete specific references to certain emulsifying ingredients because they would be included as safe and suitable emulsifying ingredients and establish a maximum combined use level for emulsifiers of 1.0 percent.

On its own initiative, FDA also proposed to: (1) Establish a new *Section 163.5 Methods of Analysis* to avoid repetitive listing of the methods for determining cacao fat and cacao shell content, to delete the reference citations for the methods in the individual standards, and to cite a newer method for the determination of cacao fat; (2) delete references to certain optional ingredients including ground nut meats, ground coffee, and dried cereal malt extract; (3) delete specific references to certain sweetening ingredients such as honey, molasses, brown sugar, and maple sugar because they would be included as safe and suitable nutritive carbohydrate sweeteners; (4) amend the standard for sweet cocoa and vegetable fat (other than cacao fat) coating to provide for the optional use of chocolate liquor in combination with cocoa; (5) delete the phrase "other than cacao fat" in the product names of coatings covered by the standards of identity in §§ 163.153 and 163.155; and (6) redesignate the standard for sweet cocoa and vegetable fat (other than cacao fat) coating in § 163.150 as "chocolate flavor coating." In addition, FDA proposed to require label declaration of all optional ingredients used in accordance with applicable sections of the labeling regulations in 21 CFR part 101.

The FDA rulemaking, based on the CMA petition, was initiated under authority of section 701(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 371(e)) which required formal rulemaking in any action for the issuance, amendment, or repeal of a food standard. However, the Nutrition Labeling and Education Act of 1990 (Pub. L. 101–535) (the 1990 amendments), enacted November 8, 1990, removed food standards rulemaking (except for actions for the amendment or repeal of food standards of identity for dairy products or maple syrup) from the coverage of 21 U.S.C. 371(e). Therefore, FDA is providing notice that it is proceeding under 21 U.S.C. 371(a) in this rulemaking, which means that it is informal, notice and comment rulemaking under the Administrative Procedure Act.

Under formal rulemaking procedures established in 21 U.S.C. 371(e), there is an opportunity to object to any final rule and to request a public hearing upon such objection. Such an opportunity is not provided as part of informal rulemaking. To reflect this change in statutory authority and to ensure that no one is prejudiced by this change in procedure, the agency is providing an additional opportunity for comment before it decides on a final rule. Consequently, FDA is issuing this

tentative final rule with a 30-day comment period.

In the **Federal Register** of January 25, 1989 (54 FR 3615), FDA offered interested persons the opportunity to comment on the proposed rule to amend the standards of identity for cacao products. The comment period ended March 27, 1989. Responding to requests from the American Dairy Products Institute and CMA, FDA published a notice in the **Federal Register** (54 FR 14663, April 12, 1989) reopening and extending the comment period until June 12, 1989. The comment period was subsequently extended an additional 60 days, to August 11, 1989, at the request of the International Ice Cream Association (54 FR 24908, June 12, 1989).

The agency has fully considered all comments that it received on the proposal in reaching the tentative determinations set forth in section II.A. The agency considers section II.A. to be a tentative final rule. The agency advises that it intends to review any comments that it receives on this tentative final rule and to issue a final rule as expeditiously as possible. The agency also advises that it is not likely to take regulatory action against products that would comply with the standards as revised in accordance with the discussion in section II.A. The agency advises, however, that any company that modifies its product in response to this tentative final rule does so at the risk that it may need to make further changes in its product in response to the final rule or face regulatory action.

During the extended comment period, several issues were raised (e.g., establishing a standard of identity for white chocolate; whether to revise the cacao standards to achieve consistency with proposed definitions for nutrient content claims) that were outside the scope of the original proposal. These issues are discussed in section II.B. of this document. Because these issues have not been fully considered, FDA is not prepared to more on them as quickly as it will move on the issues in section II.A.

FDA is providing a 60-day comment period on the issues discussed in section II.B. The agency seeks comments on whether the actions are appropriate, and whether they will promote honesty and fair dealing in the interest of consumers. Should FDA receive comments supporting the actions discussed in section II.B., it will respond to such comments in a separate document to the one that it intends to issue as a final rule on the issues discussed in section II.A.

II. Comments

Fourteen letters, each containing one or more comments, were received from trade associations, ingredient suppliers, law firms, and an equipment distributor. Discussions of the specific comments and the agency's responses follow.

A. Tentative Final Rule

1. Sweeteners

For comments supported the use of the functional group designation of "nutritive carbohydrate sweeteners" in the standards for sweet chocolate (§ 163.123) and milk chocolate (§ 163.130). One comment stated that the term, although generally understood, was not sufficiently clarified in the preamble of the proposal. The comment stated that FDA should further clarify the term, either in the preamble of the final rule or in the final regulations, to show that it includes sugar alcohols and other carbohydrates such as maltodextrin and certain starches that, like lactose, provide reduced sweeteness. Another comment suggested that the term should include rice syrup solids. Two comments stated that the term should also include sweetners from fruit juice concentrates in combination with maltodextrin or dextrins.

In response to these comments, CMA stated that sugar alcohols and substances such as maltodextrin are not "nutritive carbohydrate sweeteners" or are not "suitable" for use in standarized sweet chocolate and milk chocolate products. CMA also stated that the specific nutritive carbohydrate sweeteners permitted in chocolate should be those specified by the Codex standards for chocolate. CMA maintained that the sweeteners identified in the Codex Standards are safe and technologically suitable for use in chocolate, as shown by their long-standing use in chocolate products worldwide.

FDA notes that the Codex standards for chocolate and cocoa products permit the use of "those sugars for which standards have been elaborated by the Codex Alimentarius Commission." These sugars include: white sugar (sucrose), powdered sugar (icing sugar), soft sugars, dextrose (anhydrous and monohydrate), glucose syrup, dried glucose syrup, lactose, honey, powdered dextrose, and fructose.

FDA proposed to use the functional group designation, "nutritive carbohydrate sweeteners," to provide greater flexibility in the choice of sweeteners that can be used in cacao products and to reduce the need to amend the cacao products standards as other safe and suitable nutritive carbohydrate sweeteners are developed. The agency believes that listing all nutritive carbohydrate sweeteners that FDA is currently aware of, and considers appropriate for use in cacao products, is impractical and would be contrary to the intent of this proposal. To minimize possible confusion, the agency sets forth the following discussion of the characteristics that, when used collectively, describe the class of sweeteners commonly known as "nutritive carbohydrate sweeteners."

Nutritive carbohydrate sweeteners are relatively low molecular weight saccharides. They are polyhydroxy aldehydes and ketones which may be classified as monosaccharides (e.g., glucose or fructose), disaccharides (e.g., sucrose or lactose), or trisaccharides (e.g., raffinose). The agency advises that "safe and suitable nutritive carbohydrate sweeteners" include such substances as the sweeteners listed in part 168 (21 CFR part 168).

The term "nutritive" in the phrase "nutritive carbohydrate sweeteners" implies that a food can be metabolized. Section 170.3(o)(21) (21 CFR 170.3(o)(21)) defines "nutritive sweeteners" as "those substances having greater than 2 percent of the caloric value of sucrose per equivalent unit of sweetening capacity."

The sweetening power of carbohydrates is a function of their chemical structure, the concentration of the constituent saccharides, and the degree to which they are polymerized. Nonsweet, high molecular weight saccharide polymers (e.g., corn starch or rice starch) are not "nutritive carbohydrate sweeteners" unless they have been converted or hydrolyzed to lower molecular weight saccharides or simple sugars such as D-glucose (dextrose). When these starches are completely converted, the end product is 100 percent dextrose. If partially converted, the degree of conversion of the product is expressed in terms of the dextrose equivalent (DE). ("DE" is defined as a measure of the reducing sugar content calculated as a percentage of the total dry substance.)

In response to comments requesting clarification on whether specific ingredients would be considered safe and suitable nutritive carbohydrate sweeteners, the agency notes the following:

Maltodextrin is primarily used as a carrier or bulking agent. It has a DE of less than 20. On the other hand, the standard for glucose sirup (21 CFR 168.120), a nutritive carbohydrate sweetener obtained from edible starch,

specifies a DE of not less than 20. Maltodextrin has been defined in § 184.1444 (21 CFR 184.1444) as a "nonsweet nutritive saccharide polymer." Therefore, it is not a sweetener for the purpose of these standards.

Rice syrup solids, although specifically listed in Part 168, are provided for under the standard of identity for dried glucose syrup in § 168.121. Therefore, they are nutritive carbohydrate sweeteners.

Although lactose has considerably less sweetening power than the sweeteners currently permitted by the cacao products standards, it is listed as a sweetener in § 168.122 and may be suitable in some cacao product formulations.

Sugar alcohols are derivatives of carbohydrates and are commonly referred to as "polyhydric alcohols" or "polyols." FDA notes that sugar alcohols such as sorbitol (§ 184.1835) and xylitol (§ 172.395 (21 CFR 172.395)) are usually used as sweeteners in foods for special dietary use. They also provide other technical functions that may be beneficial in chocolate-containing confections. However, sugar alcohols are not saccharides; thus, these ingredients do not conform to the definition of "nutritive carbohydrate sweeteners" set forth in these standards.

FDA does not believe that the comments have provided sufficient information concerning the nature of the fruit juice concentrate and maltodextrin or dextrim mixtures and their effects on the finished food or consumer acceptability to justify consideration of these combinations of ingredients as nutritive carbohydrate sweeteners that are suitable for use in the manufacture of cacao products. Fruit juice concentrates are themselves foods that may serve as sources of nutritive carbohydrate sweeteners. They may also contain other constituents, such as fruit flavors, acids, and juice solids, that could make them unsuitable for use in cacao products. Therefore, FDA is not providing for their use in the standards set out below.

FDA acknowledges that some manufacturers have developed processes whereby fruit juices may be decharacterized by removing the flavor constituents and color, so that the resulting products are essentially solutions of the sugars from the juice, no longer resembling the fruit juices from which they were made. Those sugars that would be naturally occurring in the juice would be nutritive carbohydrate sweeteners and would have to be declared by their common names (e.g., sucrose or fructose) or by an appropriate term that is not misleading, such as "decolorized, decharacterized grape juice concentrate," and not as fruit juice concentrates.

The agency has tentatively decided to incorporate the functional group designation "safe and suitable nutritive carbohydrate sweeteners" into the standards for sweet chocolate and milk chocolate, as proposed. This approach minimizes the need to revise the standards as other nutritive carbohydrate sweeteners are found to be safe and suitable for use in these foods. Accordingly, FDA is amending the standards of identify for sweet chocolate in § 163.123(a)(1) and (b)(2), milk chocolate in § 163.130(a)(1) and (b)(2), and, by cross-reference, the standards of identify for buttermilk chocolate (§ 163.135), skim milk chocolate (§ 163.140), mixed dairy product chocolates (§ 163.145), sweet cocoa and vegetable fat (other than cacao fat) coating (§ 163.150), sweet chocolate and vegetable fat (other than cacao fat) coating (§ 163.153), and milk chocolate and vegetable fat (other than cacao fat) coating (§ 163.155), to include this functional group designation in lieu of a list of specific permitted sweeteners.

2. Milkfat Content and Nonfat Milk Solids-to-Milkfat Ratio

Six letters commented on the proposed amendment to reduce the minimum milkfat content of milk chocolate in § 163.130(a)(2) from 3.66 to 3.39 percent and to eliminate the nonfat milk solids-to-milkfat ratio. Five letters claimed that the proposed changes were not justified. They argued that the CMA statement that the current requirement of 3.66 percent milkfat in milk chocolate is 7 percent higher than that for standardized milk is in error. The comments presented data from several sources that the average milkfat content for producers' milk, before standardization for beverage purposes, has been 3.67 percent for many years and has not declined.

In response to the comments opposed to the reduction in milkfat content in milk chocolate, CMA stated that the grounds for the objections are unsound and fail to address the entire rationale for the proposed changes. The petitioner explained that the standard of identify for milk is § 131.110 (21 CFR 131.110) requires that milk contain not less than 11.5 percent total milk solids and at least 3.5 percent milkfat. The standard for milk chocolate is § 163.130 requires a minimum level of 12 percent total milk solids. For both products to have the same proportion of total milk solids to milkfat, milk chocolate that contains 12 percent total milk solids must contain 3.39 percent milkfat.

The petitioner stressed that it was proposing that the minimum required milkfat content of milk chocolate be changed to 3.39 percent to be consistent with the proportion of total milk solids to milkfat in standardized milk. CMA stated that it is not proposing to reduce the total milk solids content in milk chocolate from 12 percent to 11.5 percent.

CMA also stated that deleting the current nonfat milk solids-to-milkfat ratio requirement would enable manufacturers to meet the milkfat requirement and still add more milk solids, thereby creating additional product choices.

The agency has evaluated both arguments and tentatively concludes that it is reasonable to lower the minimum milkfat content in milk chocolate, so that the proportional milkfat content in milk chocolate is not less than that of milk under the standard of identify in § 131.110. The agency recognizes that chocolate manufacturers generally do not use milk as standardized for beverage purposes but rather use concentrated milk, dry milk, and fluid milk products tailored to their specific needs. Thus, chocolate manufacturers are not bound by milkfat and total milk solids levels found in producers' milk. However, the agency believes that the request to reduce the minimum required milkfat content in milk chocolate, so that it is consistent with that required in standardized milk, is reasonable. Lowering the required minimum level of milkfat in the cacao products standards will provide flexibility for manufacturers. Manufacturers can continue to produce milk chocolates with higher milkfat levels when desired.

Similarly, FDA has tentatively decided to grant the CMA rquest to delete the requirements for the nonfat milk solids-to-milkfat ratio. Deleting the nonfat milk solids-to-milkfat ratio will permit manufacturers to produce products with a higher nonfat milk solids content and provide consumers with greater product choices. This action is consistent with agency policy and efforts to permit, where appropriate, technological flexibility and the opportunity to market a wider variety of products. These actions will benefit consumers by providing for products with a broader range of physical characteristics while maintaining the essential nutritional characteristics of milk chocolate because the total milk solids content requirement is unchanged.

Therefore, FDA has tentatively decided to reduce the minimum milkfat content from 3.66 percent to 3.39 percent in milk chocolate in § 163.130(a)(2) and to reduce the maximum milkfat content from 3.66 to 3.39 in buttermilk chocolate (§ 163.135) and skim milk chocolate (§ 163.140). FDA has also tentatively decided to reflect this change in the standard for mixed dairy product chocolates (§ 163.145). In addition, FDA has tentatively decided to delete the nonfat milk solids-to-milkfat ratio requirement in the standard of identity for milk chocolate (§ 163.130), as proposed.

3. Percent Fat in Chocolate Liquor

When the cacao product standards were promulgated (9 FR 14329, December 6, 1944), cacao nibs seldom contained less than 50 percent, or more than 58 percent, by weight of cacao fat. Therefore, FDA concluded that these were practicable and reasonable limits for the cacao fat content of chocolate liquor in § 163.111.

In the January 25, 1989, **Federal Register** document, FDA proposed to retain this cacao fat content requirement for chocolate liquor. The agency believed, however, that the method of calculating chocolate liquor content based on the weight of nonfat cacao solids in finished sweet chocolate and milk chocolate (§§ 163.123(a)(2) and 163.130(a)(2)) was superfluous and thus did not include this language in the proposed standards.

In its comments on the proposal, CMA stated that current research in breeding has produced cacao nibs containing up to 60 percent cacao fat. CMA requested that the cacao fat content level in the standard for chocolate liquor (§ 163.111) be changed by raising the upper limit from "not more than 58 percent" to "not more than 60 percent." CMA also stated that an increase in cacao fat in chocolate liquor should not be accompanied by a decrease in nonfat cacao solids in the finished cacao product. To avoid such a result, the comment requested that FDA retain the method of calculating the chocolate liquor content in sweet chocolate and milk chocolate that is in the current standards.

The agency believes that the requested change to reflect the increased level of cacao fat in chocolate liquor as a result of the increased fat content in cacao beans is a logical outgrowth of the proposal and is consistent with the agency's goal of updating the cacao product standards. Accordingly, FDA is proposing to amend § 163.111(a)(1) to increase the maximum cacao fat content of chocolate liquor to 60 percent. In addition, FDA is proposing to retain the method for calculating the chocolate liquor content in the current standards for sweet chocolate (proposed § 163.123(a)(2) and milk chocolate (proposed § 163.130(a)(2)), to ensure that the nonfat cacao solids content is not diminished when chocolate liquor containing higher levels of cacao fat is used.

4. Status of Certain Optional Ingredients

In its comments on the proposal, CMA opposed the proposed deletion of the provisions for the use of ground nut meats, ground coffee, and malt extract in the standards for chocolate liquor (§ 163.111), sweet chocolate (§ 163.123), and milk chocolate (§ 163.130). In the preamble of the proposal, FDA stated that it believed that ground nut meats, ground coffee, and malt extract were seldom used in the preparation of sweet chocolate or milk chocolate and proposed to delete reference to these ingredients. The comment disagreed, stating (and providing supporting evidence) that because these ingredients are frequently used, the provision for their use should be retained. CMA also requested that ground nut meats be specifically identified as ground whole nut meats to ensure that defatted ground nut meat is not used. The comment maintained that occasionally defatted nut meats have been used abroad in chocolate products as fillers or extenders for cocoa. It addeded that the fat content of ground whole nut meats makes the addition of such nut meats self-limiting.

Based on the evidence that CMA submitted that ground whole nut meats, dried malted cereal extract, and ground coffee are still used as ingredients in the preparation of sweet chocolate and milk chocolate, FDA has retained these foods as optional ingredients in § 163.111(b)(4), § 163.123(b)(3), and § 163.130(b)(3).

CMA also stated that the permitted dairy ingredients malted milk and dried milk were omitted in the proposed revision of the standard for sweet chocolate, and that dried milk had been omitted in the proposed revision of the standard for milk chocolate. Because there was no discussion in the preamble, CMA stated that the omissions were apparently inadvertent. CMA contended that there is no reason not to continue to provide for the use of these ingredients in §§ 163.123(b)(4) and 163.130(b)(4).

FDA agrees that the listing of these omitted ingredients should be restored and has added dried milk and malted milk as permitted dairy ingredients in § 163.123(b)(4)(ii) and (b)(4)(v), respectively, and dried milk as a permitted dairy ingredient in § 163.130(b)(4)(ii).

5. Revision of the Name for Sweet Cocoa and Vegetable Fat (Other Than Cacao Fat) Coating

FDA proposed to redesignate the standard for "sweet cocoa and vegetable fat (other than cacao fat) coating" in § 163.150 as "chocolate flavor coating." The agency believed that the term "chocolate flavor coating" was appropriate for a product containing cocoa, alone or in combination with chocolate liquor, as the source of chocolate flavoring.

A comment from a law firm objected to the proposed name change, stating that use of the term "flavor" in the name of a standardized food is inappropriate. The comment contended that the term conflicts with FDA's CPG 7105.15. The firm argued that application of the terminology to a standardized food would place manufacturers of nonstandardized confectionery products at a serious disadvantage.

CMA disagreed with this comment, stating that codifying the name "chocolate flavored" in the standards for compound coatings would be consistent with industry practice and would provide useful information to consumers with regard to the nature or taste of coatings that contain a substantial quantity of cacao solids. CMA further stated that a wide variety of coatings containing vegetable fat and the minimum nonfat cacao solids level in the proposed standards are already known in the trade as "chocolate flavored" or "milk chocolate flavored" coatings. However, the comment admitted that there may be products sold now as chocolate flavored or milk chocolate flavored coatings that do not comply with the standard for "sweet cocoa and vegetable fat (other than cacao fat) coating." To the extent that reformulations will be necessary to comply with the standard, CMA stated that these reformulations will be salutary and will promote honesty and fair dealing in the interest of consumers.

FDA notes that CPG 7105.15 is concerned only with the terms "chocolate" and "chocolate flavored" as applied to nonstandardized foods. The guide states that any nonstandardized food product that contains cocoa as the chocolate flavoring ingredient may bear the term "chocolate" if it can be demonstrated that consumers recognize that the food (e.g., chocolate pudding or hot chocolate) may be made from cocoa and do not expect it to contain some other chocolate ingredient. Foods that contain cocoa as the sole source of

chocolate flavoring must be labeled "chocolate flavored" or "natural chocolate flavored" when consumers could reasonably expect such foods to contain a chocolate ingredient. For example, a chocolate bar is expected to contain chocolate and may not be made from cocoa unless it is labeled as a "chocolate flavored" candy. The purpose of the guide is to prevent the misuse of the word "chocolate" in various food names.

FDA acknowledges that nonstandardized products may exist that are known as "chocolate flavored coating" and do not comply with § 163.159. The agency did not intend to broaden this standard to include nonstandardized, substitute chocolate products. Nor would FDA want to require that manufacturers of nonstandardized confectionery products reformulate or relabel such products without good cause. Furthermore, FDA believes that this terminology should continue to be available for nonstandardized chocolate products.

Therefore, the agency is withdrawing that portion of its 1989 proposal (54 FR 3615 at 3622) that would have redesignated *Section 163.150 Sweet Cocoa and Vegetable Fat (Other Than Cacao Fat) Coating* as *Section 163.50 Chocolate Flavor Coating*. FDA is tentatively redesignating *Section 163.150* as *Sweet Cocoa and Vegetable Fat Coating*. The agency believes that this name adequately reflects the nature of the food. FDA requests comments on this tentative action.

6. Revision of the Names for Other Coatings Made With Vegetable Fat

In its comments on the proposal, CMA suggested that 21 CFR 163.153 *Sweet Chocolate and Vegetable Fat (Other Than Cacao Fat) Coating* be redesignated as *Section 163.153 Sweet Chocolate Flavored Coating*. CMA also suggested that FDA redesignate § 163.155 *Milk Chocolate and Vegetable Fat (Other Than Cacao Fat) Coating* as *Section 163.155 Milk Chocolate Flavored Coating*. CMA contended that the phrase "and vegetable fat" in the name is unnecessary and should be deleted. It pointed out that the vegetable-derived fat ingredients would continue to be listed on the label as ingredients as required by the applicable sections of Part 101.

The agency does not believe that the suggested nomenclature is appropriate for sweet chocolate coatings and milk chocolate coatings that are made with vegetable fat. As stated in the discussion of the previous comment, the agency believes that the "chocolate flavored" terminology should be available for labeling nonstandardized substitutes for standardized chocolate products. Because FDA is not adopting the "chocolate flavored" terminology for these coatings, the phrase "and vegetable fat" remains a necessary part of the names of the coatings. The phrase describes the primary difference between coatings made with vegetable fat and the sweet chocolate and milk chocolate products that they resemble. FDA believes that the phrase is necessary to distinguish the coatings in §§ 163.153 and 163.155 from sweet chocolate (§ 163.123) and milk chocolate (§ 163.130). Therefore, FDA is retaining the designations of *Section 163.153 Sweet Chocolate and Vegetable Fat Coating* and of *Section 163.155 Milk Chocolate and Vegetable Fat Coating*, that it proposed in the January 25, 1989, document.

7. Use of Chocolate Liquor in Sweet Cocoa and Vegetable Fat Coating

FDA proposed to amend the standard for "sweet cocoa and vegetable fat (other than cacao fat) coating" in § 163.150 to provide for the optional use of chocolate liquor. There were no objections to this proposed action. However, CMA suggested that the proposed standard could be incorporated into a new revised standard that would contain the elements of both the standards for "sweet cocoa and vegetable fat (other than cacao fat) coating" and "sweet chocolate and vegetable fat (other than cacao fat) coating," currently in §§ 163.150 and 163.153, respectively. CMA stated that this approach would allow removal of § 163.150.

FDA disagrees with the CMA suggestion to eliminate *Section 163.150 Sweet Cocoa and Vegetable Fat (Other Than Cacao Fat) Coating* by providing for the optional use of cocoa, alone or in combination with chocolate liquor, in *Section 163.153 Sweet Chocolate and Vegetable Fat (Other Than Cacao Fat) Coating*.

The agency notes that the standard for "sweet chocolate and vegetable fat (other than cacao fat) coating" in § 163.153 describes a food that resembles sweet chocolate (§ 163.123) in that it contains not less than 15 percent by weight of chocolate liquor. The standard for "sweet cocoa and vegetable fat (other than cacao fat) coating" in § 163.150 also describes a food that resembles sweet chocolate except that the food is prepared using cocoa rather than chocolate liquor. Section 163.150 requires that the food contain not less than 6.8 percent by weight of the nonfat cacao portion of such cocoa, an amount equivalent to the nonfat cacao solids content of sweet chocolate and sweet chocolate and vegetable fat (other than cacao fat) coating.

Amending the standard for coatings made with sweet cocoa and vegetable fat in § 163.150 to provide for the optional use of chocolate liquor, as proposed by FDA, would provide manufacturers with increased flexibility while maintaining the minimum required nonfat cacao solids content requirement for the food. Consumers could choose from a wider range of products that continued to provide the level of chocolate flavor they expect in a sweet cocoa and vegetable fat coating. However, amending the standard for coatings made with sweet chocolate and vegetable fat, as suggested by CMA, would provide for products that did not contain the minimum level of chocolate liquor required in sweet chocolate (§ 163.123). The agency believes that it would be inappropriate to allow cocoa to replace all, or part, of the chocolate liquor in a food that purports to be "chocolate" with added vegetable fat. The agency believes that the CMA request is not consistent with the intent of the proposal, i.e., to allow the use of chocolate liquor to supplement or replacement part of the cocoa in coatings made with sweet cocoa and vegetable fat. Therefore, FDA must deny the CMA request.

FDA is retaining the provision for the optional use of chocolate liquor in § 163.150 (tentatively designated as *Section 163.150 Sweet Cocoa and Vegetable Fat Coating)*, as proposed.

8. Milkfat in Milk Chocolate and Vegetable Fat Coating

FDA proposed to revise the current milkfat content requirements and to eliminate the nonfat milk solids-to-milkfat ratio requirements for certain cacao products. In its comments on the proposal, CMA stated that the proposed minimum requirement of 3.39 percent milkfat in the milk chocolate standard (§ 163.130(a)((2)) should not be applicable to milk chocolate and vegetable fat coating (§ 163.155), and that, as a result, the milk solids requirement in § 163.155 should be reduced from 12 percent to 8.61 percent (i.e., 12 percent total milk solids less the 3.39 percent solids from milkfat). CMA maintained that coatings are frequently made with palm kernel oil, whose presence in the coating will not permit the use of any milkfat. CMA also stated that even when other vegetable fats, such as soy or cottonseed oils, are used in milk chocolate and vegetable fat

coatings, the melting point requirements often place constraints on the levels of milkfat that can be used. CMA contended that the distinctive flavor and appearance of the milk chocolate and vegetable fat coating results primarily from the presence of nonfat milk solids and not from the use of milkfat. The comment also noted that most of the highly desired, nonstandardized, milk chocolate flavored coatings being sold by CMA members contain little or no milkfat. Therefore, CMA requested that § 163.155 be amended to exempt milk chocolate and vegetable fat coating from the minimum milkfat requirement for milk chocolate.

The agency notes that the coatings standards in §§ 163.153 and 163.155 provide for foods that resemble sweet chocolate and milk chocolate, except that vegetable fat is added in lieu of additional cacao fat. As such, consumers could reasonably expect milk chocolate and vegetable fat (other than cacao fat) coatings (§ 163.155) to contain levels of milkfat and milk solids equal to that of milk chocolate. Therefore, the agency believes that it would be inappropriate to eliminate the milkfat content requirement (and, as a consequence, to reduce the minimum milk solids content requirement) of milk chocolate and vegetable fat coating in § 163.55 compared to milk chocolate coating in § 163.130, and FDA is denying the request.

FDA recognizes that some firms might want to manufacture milk chocolate-like coatings with vegetable fats that are not compatible with milkfat. The agency notes that *Section 163.140 Skim milk chocolate* provides for a food that exhibits dairy characteristics similar to milk chocolate in § 163.130 (including a requirement of not less than 12 percent skim milk solids by weight) except that the finished skim milk chocolate contains less than 3.39 percent by weight of milkfat. The agency believes that providing for a food labeled "skim milk chocolate and vegetable fat coating" within the proposed standard for milk chocolate and vegetable fat coating (§ 163.155) would allow manufacturers the increased flexibility that they desire. Consumers would benefit from increased product choices, while the proposed nomenclature would clearly indicate that the food contained less milkfat compared to milk chocolate (§ 163.130) or milk chocolate and vegetable fat coating (§ 163.155). Therefore, the agency is proposing to amend Section *163.155 Milk Chocolate and Vegetable Fat Coating* to provide for products that contain less than 3.39 percent by weight of milkfat and are labeled "skim milk chocolate and vegetable fat coating."

9. Other Ingredients in Chocolate and Vegetable Fat Coatings

FDA proposed to provide for the use of safe and suitable nutritive carbohydrate sweeteners and emulsifiers in certain cacao products. In its comments on the proposal, CMA supported the use of functional group designations within the cacao products standards. CMA suggested further modifications in the coatings standards (§§ 163.150, 163.153, and 163.155) to provide for the use of safe and suitable dairy-derived ingredients, bulking agents, formulation aids, humectants, and texturizers. In addition, CMA stated that some ingredients, like polydextrose (§ 172.841), are already cleared for food use provided that their use is not precluded by standards of identity. CMA noted that providing for the use of "safe and suitable" ingredients that perform a particular technical effect, as FDA proposed to do with respect to emulsifiers in the sweet chocolate and milk chocolate standards, will ensure consumer protection while providing the industry with the ability to utilize new ingredients as they are developed. CMA also stated that this action would allow industry to take advantage of technological innovation and permit development of products with a wider range of physical properties.

A comment from a food ingredient producer requested that glyceryl tristearate (§ 172.811) be permitted as an optional safe and suitable ingredient in cacao products. It noted that glyceryl tristearate is listed in § 172.811 (c)(1) and (c)(3) for food additive use as a crystallization accelerator in cocoa products, imitation chocolate, and compound coatings and as a formulation aid in confections.

The agency notes that under §172.811 of the food additives regulations, glyceryl tristearate is listed for five specified uses, two of which appear to be applicable to certain of the cacao product standards. These include its use as: (1) A crystallization accelerator in cocoa products, in imitation chocolate, and in compound coatings; and (2) a formulation aid as described in § 170.3(o)(14) (21 CFR 170.3(o)(14)) in confections. Polydextrose (§ 172.841) is listed for use as a bulking agent, formulation aid, humectant, and texturizer in confections.

FDA believes that the use of polydextrose and glycerol tristearate in coatings made with vegetable fat (§§ 163.150, 163.153, and 163.155) is consistent with the food additive regulations in §§ 172.811 and 172.841. The agency also believes that providing for the use of ingredients that perform a specific technical effect is consistent with the history and intent of the standards in §§ 163.150, 163.153, and 163.155, that is, to provide for the use of vegetable fat to achieve desired melting characteristics. Furthermore, providing for the use of additional safe and suitable ingredients by functional group designation would provide manufacturers with increased flexibility and minimize the need to amend the standards as new ingredients are developed. Consumers would benefit from a wider range of product choices, at potentially lower cost.

Therefore, FDA is tentatively expanding the proposed provisions for the use of safe and suitable ingredients in §§ 163.150(b), 163.153(b), and 163.155(b) to include dairy-derived ingredients, bulking agents, formulation aids, humectants, and texturizers.

With respect to the dairy-derived ingredients, CMA argued that a dairy-derived ingredient, such as whey, should not be used in meeting the minimum nonfat milk solids requirements in milk chocolate and vegetable fat coating. CMA recommended that the calculation of the total milk solids content be based only on those dairy ingredients specified in proposed § 163.123(b)(4) and § 163.130(b)(4).

FDA agrees with the suggestion made by CMA with respect to the milk solids requirements in §§ 163.153 and 163.155. The agency notes that the minimum content requirements for total milk solids in the existing standards for milk chocolate (§ 163.130) and, by cross-reference, milk chocolate and vegetable fat (other than cacao fat) coating (§ 163.155) ensure that these products contain the level of dairy flavor that consumers expect in milk chocolate. Conversely, the maximum total milk solids content requirements in sweet chocolate (§ 163.123) and sweet chocolate and vegetable fat (other than cacao fat) coating (§ 163.153) were established to distinguish these foods from milk chocolate and from coatings made with milk chocolate and vegetable fat. The agency knows of no reason to include, in determining whether a food meets these minimum or maximum requirements, dairy-derived ingredients that do not significantly contribute to the dairy character of the food. Whey, for example, which is primarily lactose, may perform a desired technical effect in the food, but it would not contribute to the flavor, texture, and appearance that consumers expect in a milk chocolate product. The agency believes that limiting the calculation of total milk

solids content requirements in §§ 163.153 and 163.155 to those dairy ingredients that are specified in §§ 163.123(b)(4) and 163.130(b)(4) is therefore appropriate.

Consequently, FDA is tentatively amending paragraph (a) in both proposed *Section 163.153 Sweet Chocolate and Vegetable Fat Coating* and proposed *163.155 Milk Chocolate and Vegetable Fat Coating* to specify that compliance with the total milk solids content requirements in §§ 163.123(a)(2) and 163.130(a)(2) shall be calculated using only those dairy ingredients referred to in §§ 163.123(b)(4) and 163.130(b)(4), respectively.

Accordingly, FDA is tentatively amending proposed §§ 163.150, 163.153, and 163.155 to provide for the use of safe and suitable dairy-derived ingredients, bulking agents, formulation aids, humectants, and texturizers. The agency is also adding new language to proposed §§ 163.153(a) and 163.155(a) to limit the calculation of the total milk solids content requirement to those dairy ingredients listed in §§ 163.123(b)(4) and 163.130(b)(4).

10. Other Matters

a. In an effort to update the language and the format of the standards, FDA proposed to make editorial changes in the Definitions and Nomenclature sections (§ 163.123 (a) and (c)) of the proposed standard for sweet chocolate. In its comments on the proposal, CMA observed that the current standard for sweet chocolate (§ 163.123(a)) states that bittersweet chocolate is sweet chocolate that contains not less than 35 percent by weight of chocolate liquor. It also observed that § 163.123(g) lists "semisweet chocolate" and "bittersweet chocolate" as alternate names for sweet chocolate that contains not less than the minimum quantity of chocolate liquor prescribed for bittersweet chocolate in § 163.123(a). CMA stated that proposed § 163.123 (a) and (c), as modified, could be interpreted to mean that bittersweet chocolate is an alternative name for sweet chocolate, which is untrue. Therefore, CMA requested that proposed § 163.123(a)(3) be revised to specifically state that "semisweet or bittersweet chocolate is the sweet chocolate that contains not less than 35 percent by weight of chocolate liquor complying with the requirements of § 163.111 and calculated in the same manner as set forth in paragraph (a)(2) of this section."

The agency agrees that § 163.123, as proposed, did not make clear that bittersweet chocolate is the alternative name for only semisweet chocolate, and therefore FDA has made the appropriate editorial changes in the standard for sweet chocolate in § 163.123(a)(3) to clarify this point.

b. The existing standard for milk chocolate in § 163.130(a) states that the food is prepared from chocolate liquor, one or more optional dairy ingredients, and one or more optional saccharine ingredients. The proposed amendment of § 163.130(a) erroneously omitted the specific requirement that makes sweetening ingredients mandatory. Therefore, to correct this inadvertent omission, FDA is republishing § 163.130(a) with nutritive carbohydrate sweeteners listed as a mandatory component of milk chocolate.

c. FDA also notes that the existing standard for chocolate liquor in § 163.111(a)(4) provides for the use of butter and milkfat as seasonings and in § 163.111(b)(4) requires that the use of such seasoning be declared on the label in a statement that must immediately and conspicuously precede or follow the name of the food. The proposal omitted the reference to labeling of butter and milkfat when used as seasonings. To correct this omission, FDA is including a reference to paragraph (b)(5) (butter or milkfat) in § 163.111(c)(3), so that when these ingredients are used as seasonings in chocolate liquor, the label will bear and appropriate statement, e.g., "Seasoned with butter".

11. Alternate Method of Analysis

FDA proposed (54 FR 3615 at 3617) to establish a new *Section 163.5 Methods of Analyses* to avoid repetitive listings of the methods for determining cacao fat and cacao shell content and to update the citation for the determination of cacao fat. In its comment on the proposal, an equipment distributor sought to have a new extraction process (involving a patented procedure and equipment) included along with the cited Soxhlet extraction method of the Association of Official Analytical Chemists (AOAC) for the determination of fat in cacao products (§ 163.5). The comment stated that FDA was being too restrictive by not allowing for new equipment and techniques that are safer, faster, and more economical than the classical Soxhlet apparatus. The comment further stated that a good portion of the cacao products industry had converted to the patented extraction technique, and that it would be short-sighted if the final rule did not take the current state-of-the-art methodology into consideration.

FDA is not being restrictive by not specifically alowing for new and safer equipment and techniques. The method cited in the proposal is not necessarily intended to replace routine methods used in the industry. According to 21 CFR 2.19, it is FDA policy to use official methods of the AOAC where they are available. This regulation also states that other effective methods may be used for quality control, but that the agency expects that the other methods will be calibrated in terrms of the official AOAC methods. At the present time, the technique discussed in the comment does not have official AOAC status. The test results submitted in the comment were for studies that used meat and did not include studies on the determination of fat in cacao products.

FDA is therefore not revising the proposed regulations to include the extraction technique cited in the comment. This method, or any other effective method, may be used for quality control and other nonregulatory functions. However, FDA will use the AOAC method for enforcement purposes.

B. Issues for Future Rulemaking

1. Safe and Suitable Sweeteners

FDA recognizes that various forms of new sweetening ingredients have become available since the standards were initially promulgated, and that this trend will continue with further advances in food technology and changes in consumer expectations. FDA invites comments on the desirability of increasing flexibility with respect to permitted sweeteners by broadening this provision to read "safe and suitable sweeteners" rather than "safe and suitable nutritive carbohydrate sweeteners." Comments should provide a substantive basis for such a change and include suggestions for appropriate product names to distinguish such chocolate products from those sweetened with nutritive carbohydrate sweeteners. Comments should also address the need for bulking agents in combination with high intensity sweeteners and the effect of such ingredients on the character and acceptability of cacao products. (Alternatively, persons interested in broadening this provision to permit sweetening ingredients beyond safe and suitable nutritive carbohydrate sweeteners may submit a citizen petition in the form set out in § 10.30 (21 CFR 10.30) to amend the standards.) The agency advises that should it receive substantive comments (or a petition) that support further broadening of the provision for the use of safe and suitable sweeteners in cacao products, this action would be addressed in a separate rulemaking.

The agency recognizes that cacao products have traditionally been sweetened with nutritive carbohydrate sweeteners. The agency also notes that section 402(d)(3) of the act (21 U.S.C. 342(d)(3)) prohibits the use of any nonnutritive substance in a confectionery unless the substance is used for some practical, functional purpose and does not promote deception of the consumer. FDA has held in Compliance Policy Guide 7105.01 (CPG 7105.01), entitled "Confectionery—Use of Nonnutritive Substances as Ingredients," that the use of nonnutritive sweeteners in confectionery for the purpose of caloric reduction is not a practical, functional purpose and is, therefore, prohibited. FDA is in the process of reconsidering this interpretation and will announce any revisions of CPG 7105.01 in the **Federal Register.**

2. Dried Cream Extract

A comment from a food ingredient producer requested a change in the standard of identity for milk chocolate to permit the use of "dried cream extract" which the comment defined as "a natural flavor, derived from enzyme-modified milkfat." The comment noted that the proposed standard in § 163.130(b)(3) does not permit the use of spices, natural and artifical flavoring, and other seasonings that impart a flavor that imitates the flavor of chocolate, milk, or butter. In support of its request, the comment maintained that it was understood that this provision was to ensure that a minimum standard of quality was met. The comment also pointed out that according to the proposed standard, milk chocolate must contain not less than 3.39 percent milkfat. The comment argued that the addition of dried cream extract would not be used in place of the required milkfat but would be used in addition to it. A small amount of the ingredient carries a flavor equating to a much higher level of milk. The comment also claimed that the use of dried cream extract would allow the consumer to have a better tasting product that is healthier because less fat may be used.

The agency advises that the current standard for milk chocolate (§ 163.130) prohibits the use of flavors that singularly, or in combination, imitate the flavor of chocolate, milk, or butter. This prohibition was established to prevent consumer deception, in that the use of such substances makes the finished products appear better or more valuable than they are. The agency recognizes that consumer perceptions and desires, along with ingredient and processing technologies, have changed considerably since these regulations were promulgated. The agency believes that it is appropriate to reevaluate the prohibition on the use of flavors that imitate chocolate, milk, or butter in cacao products. Therefore, FDA invites comment on the need to maintain or revise these prohibitions.

For example, FDA asks if it would be desirable to provide chocolate manufacturers with the option, once they have met the minimum requirements for milkfat content in milk chocolate, to produce a richer tasting chocolate by means of either the addition of more milkfat or by the addition of milk-like flavors. Alternatively, some products (e.g., skim milk chocolate) have a maximum milkfat content that cannot be exceeded. The agency asks if it would be appropriate to allow manufacturers to create richer tasting versions of these products by means of the addition of flavors that resemble milk or cream.

The agency also notes that all cacao product standards that provide for the optional use of natural and artificial flavorings prohibit the use of flavors that imitate chocolate, milk, or butter. Comments should be specific with regard to which prohibitions are (or are not) necessary. For example, would it make a difference if the flavoring resembled milk as opposed to chocolate, or if the flavoring was dairy- or cacao-derived as opposed to a natural or artificial flavoring not derived from dairy or cacao sources? Comments should also address whether the use of such flavorings might be more appropriate in some types of cacao products compared to other products. Comments should provide a substantive basis for any suggested changes.

The agency also invites comment on appropriate labeling to identify cacao products that contain natural or artificial milk, butter, or chocolate flavors. The agency notes that § 101.22 (21 CFR 101.22) provides that nonstandardized foods containing natural or artificial flavors that reinforce the characterizing flavor of the food must be labeled "flavored" or "artificially flavored," as appropriate. Finally, FDA invites comment on whether amending or deleting these prohibitions would promote honesty and fair dealing in the interest of consumers. The agency advised that, should it receive substantive comments that support changing the standards, this action will be addressed in a future rulemaking.

3. Alternative Forms of Coatings

In its comments on the proposal, CMA explained that the term "coatings" refers not only to those compounds that are used to enrobe other articles but also to compounds that are deposited or molded into shapes, such as chips, morsels, drops, and bunnies. The comment suggested that the coatings standards could be further amended to provide that the name of the food is, e.g., "chocolate flavored _____," the blank being filled in with the name of the article produced by the compound, e.g., drop, chip, or morsel.

The agency believes that it would be inappropriate to codify terms such as "chocolate flavored chips" or "chocolate flavored morsels" that could also describe a wide variety of nonstandardized foods. Although the foods described in §§ 163.150, 163.153, and 163.155 may be used in applications other than for enrobing, FDA advises that the current coatings standards only identify foods that are used to coat or enrobe other articles. The standards do not provide for additional applications such as shaping or molding.

The agency invites comment on the desirability of expanding the coverage of the standards in §§ 163.150, 163.153, and 163.155 to apply not only to material used for enrobing but also to the solid or semiplastic food that may be molded or deposited in a specific form (e.g., chips or bunnies). Comments should include suggested nomenclature that accurately describes the standardized food in its various forms.

4. Frozen Dessert Coatings Standard

A trade association representing ice cream manufacturers suggested that the revised cacao products standards include provisions for "frozen dessert coatings." It also suggested that these revised standards permit the use of safe and suitable vegetable-derived oils, fats, and stearins with no specific limitations on use levels, thereby providing for frozen dessert coatings that possess a wide range of desired physical properties acceptable to the consumer.

The agency notes that the proposed standards for sweet cocoa and vegetable fat coating (§ 163.150), sweet chocolate and vegetable fat coating (§ 163.153), and milk chocolate and vegetable fat coating (§ 163.155) provide for the use of safe and suitable vegetable derived oils, fats, and stearins. The melting point restrictions have also been tentatively removed in proposed §§ 163.150, 163.153, and 163.155. Thus, frozen dessert coatings could be produced within the parameters of the standards as proposed. If the trade association believes that there is a need for a separate standard for frozen dessert

coating, FDA suggests that the trade association submit a citizen petition in the form set out in § 10.30, according to the procedure for establishing a food standard stated in § 130.5 (21 CFR 130.5).

5. The Need to Maintain Standards for Coatings Made With Vegetable Fat

FDA notes that the standards in §§ 163.150, 163.153, and 163.155 were promulgated to define products that resemble chocolate in taste and appearance except that vegetable fats are added in lieu of additional cacao fat. Such products were developed to overcome the merchandizing problems associated with the melting of chocolate coatings and to formulate coatings for specific needs. FDA is aware that advances in the technology for food fats have resulted in various fat formulations and processing techniques that will allow the production of coatings with a wide range of physical properties.

In the initial proposal in this rulemaking (54 FR 3615 at 3618), FDA stated that the melting point restrictions in §§ 163.150, 163.153, and 163.155 are outdated and, therefore, proposed to remove them. The agency also proposed (54 FR 3615 at 3617) to provide for the optional use of chocolate liquor in *Section 163.150 Sweet Cocoa and Vegetable Fat (Other Than Cacao Fat) Coating* and to redesignate that standard as *Section 163.150 Chocolate Flavor Coating.*

As discussed above, FDA is proposing in this document to withdraw that portion of its proposal that would have designated *Section 163.150 as Chocolate Flavor Coating* and is tentatively redesignating *Section 163.150 as Sweet Cocoa and Vegetable Fat Coating.*

FDA is also proposing to expand the coverage of § 163.155 (milk chocolate and vegetable fat coating) to include skim milk chocolate coating and to provide for the use of safe and suitable dairy-derived ingredients, bulking agents, formulation aids, humectants, and texturizers.

The agency notes that the desired range of physical properties in the coatings subject to these standards (and the ability to achieve those properties) is very different now than when the standards were promulgated. This change is reflected by the relatively high proportion of comments that proposed additional amendments to the standards for chocolate coatings made with vegetable fat. Many of these comments requested changes in nomenclature or minimum content requirements that the agency believes are inappropriate, either within the context of a specific standard (e.g., eliminating the milkfat requirement for milk chocolate and vegetable fat coating) or for standardized foods generally. As previously mentioned (section II.A.8.), FDA believes that the standards for sweet chocolate and vegetable fat coating (§ 163.153) and milk chocolate and vegetable fat coating (§ 163.155) must be consistent with the minimum content requirements of the sweet chocolate (§ 163.123) and milk chocolate (§ 163.130) standards on which they are based.

FDA also notes that CMA maintained in its comment that a wide variety of coatings containing vegetable fat and the minimum nonfat cocoa solids content are known in the trade as "chocolate flavored" or "milk chocolate flavored coatings." The agency advises that these terms refer to nonstandardized foods and, as such, their use is not provided for in §§ 163.150(c), 163.153(c), and 163.155(c).

Because of the number of issues raised, and the possibility of future rulemaking with respect to these standards, FDA believes that it is appropriate to invite comment on whether it is necessary to retain standards of identity for "sweet cocoa and vegetable fat coating," "sweet chocolate and vegetable fat coating," and "milk chocolate and vegetable fat coating." Comments should be specific with regard to which standards are (or are not) necessary. Comments should provide a substantive basis for any suggested changes. Comments in favor of retaining or amending the standards for these compound coatings should include suggested nomenclature that accurately describes the nature of the food. Comments should also address how such changes will promote honesty and fair dealing in the interest of consumers. The agency advises that, should it receive comments that support substantive changes in the standards for chocolate coatings made with vegetable fat, these comments will be addressed in a future rulemaking.

6. White Chocolate Standard

A letter from a chocolate manufacturer suggested that a standard of identity be established for "white chocolate," a product that would contain cocoa butter, milk solids, butterfat, and sucrose. In support of the proposed action, the firm stated that the absence of a standard of identity for white chocolate has proven to be a limiting factor in the introduction of new products to meet consumer demand. The firm also noted the likelihood of consumer confusion over the ingredient content of products commonly referred to as "white chocolate" which may or may not contain any cacao derived ingredients. The comment observed that, in the absence of a standard for the product, the term "white chocolate" would be prohibited under the present standards of identity in 21 CFR part 163. This fact, it contended, has proven to be a deterrent to companies developing and marketing the product. When such products have been introduced, the companies have been forced to use fanciful names to avoid the labeling constraints in the standards.

FDA recognizes the dilemma faced by manufacturers of confections made from cacao fat, milk solids, sucrose, and other ingredients, but with no nonfat cacao solids, which may be labeled in other countries as "white chocolate." However, this matter is outside the scope of this tentative final rule and represents a new and separate action. The agency suggests that the manufacturer submit a citizen petition in the form set out in § 10.30 according to the procedure for establishing a food standard in § 130.5. FDA notes that the comment contained language for the proposed standard.

The agency also advises that it has granted a temporary permit (56 FR 46798, September 16, 1991) to allow market testing of two white chocolate confections. These products deviate from standardized chocolate products in that they are prepared without the nonfat components of the ground cacao nibs but contain the fat (cacao butter) expressed from the nibs.

7. Ingredient Labeling

FDA proposed in this rulemaking to require label declaration of all optional ingredients used in cacao products. There were no objections to this proposal. Subsequently, in response to the statutory changes enacted in the Nutrition Labeling and Education Act of 1990 (the 1990 amendments), FDA issued a proposal in the **Federal Register** of June 21, 1991 (56 FR 28592), that would require label declaration of all ingredients used in standardized foods, including cacao products. This proposal supersedes the January 25, 1989, proposal with respect to ingredient labeling of cacao products. Therefore, FDA is not taking any action on ingredient labeling for cacao products in this rulemaking.

The June 21, 1991, proposal was issued, in part, to implement the provisions in section 7 of the 1990 amendments, which pertain to ingredient labeling. Section 7(1) removed the portion of section 403(i) of the act that excluded mandatory ingredients and certain optional ingredients used in standardized foods

from the requirement for label declaration. Thus, FDA proposed to amend part 130 to require label declaration of all ingredients of standardized foods. In addition, FDA proposed to amend each of the applicable cacao product standards by either changing the existing language for label declaration of ingredients, or by adding a new paragraph, to require that each of the ingredients used in the food be declared on the label in accordance with the applicable sections of parts 101 and 130. Any comments concerning label declaration of ingredients in cacao products received in response to the ingredient labeling proposal will be considered within the context of that rulemaking.

The June 21, 1991, ingredient labaeling proposal was based on the existing a cacao products standards. FDA will make any necessary editorial changes (e.g., in response to paragraph redesignations) in the final rule on ingredient labeling. The agency expects that the final rule based on this tentative final rule will be issued before the final rule on the ingredient labeling proposal.

In the **Federal Register** of November 27, 1991 (56 FR 60877), the agency announced changes in the statutory effective date of the mandatory ingredient labeling provisions for standardized foods, including cacao products. A technical amendment to the 1990 amendments was enacted on August 17, 1991, to delay the effective date of the new ingredient labeling requirements. This amendment provides that labels that were printed before July 1, 1991, and attached to food before May 8, 1993, will not be subject to the mandatory ingredient labeling requirements of section 7(1) of the 1990 amendments. In other words, any cacao products bearing labels printed before July 1, 1991 (and attached before May 8, 1993), need only comply with the ingredient labeling requirements in the existing standards of identity. The technical amendment further provides that labels printed after July 1, 1991, and attached to food before May 8, 1993, are in compliance with law if they conform to the requirements of the June 21, 1991, ingredient labeling proposal or with section 7(1) of the 1990 amendments. Labels attached to food after May 8, 1993, will be subject to section 7(1) of the 1990 amendments.

8. Lowfat Cocoa

In response to the 1990 amendment, FDA published a proposed rule (56 FR 60478, November 27, 1991) that would define nutrient content claims for the fat, fatty acid, and cholesterol content of foods. In that document, FDA proposed that the term "lowfat" may be used to describe a food that contains 3 grams (g) or less fat per serving and 3 g or less fat per 100 g food. The standard of identity for lowfat cocoa (§ 163.114) states that the product contains less than 10 percent by weight of cacao fat. Thus, if the November 27, 1991 proposal is finalized as proposed, the standard for lowfat cocoa (§ 163.114) would not be consistent with the nutrient content claims regulations and could contribute to consumer confusion about the meaning of the term "lowfat."

Section 403(r)(5)(C) of the act, which was added by the 1990 amendments, specifies that nutrient content claims required by a standard of identity do not have to be defined by regulation or comply with the definitions that FDA does adopt. However, the agency believes that inconsistent use of the same term (e.g., lowfat) on various product could mislead and confuse consumers. Thus, the agency is compelled to strive for consistency in the use of nutrient content claims and intends to address their use in those standards that are being amended or updated.

FDA believes that it would be inappropriate to amend the standard for lowfat cocoa in § 163.114 before final regulations for nutrient content claims are established. However, if the nutrient content claims proposals are finalized as proposed, FDA may initiate rulemaking to revise either the nomenclature for lowfat cocoa or the cacao fat content for the food so as to conform to the requirements of the nutrient content claims regulations. FDA invites comment on alternative names for lowfat cocoa in § 163.114. The agency also invites comment on the need to retain the existing cacao fat content requirement versus establishing new requirements (e.g., 3 percent cacao fat as the maximum cacao fat content in lowfat cocoa).

The standard of identity for breakfast cocoa (§ 163.112) states that the product contains not less than 22 percent by weight of cacao fat. The standard for cocoa (§ 163.113) states that the product contains less than 22 percent but not less than 10 percent by weight of cacao fat. The standards also provide for the use of "high fat cocoa" and "medium fat cocoa" as alternative names for breakfast cocoa and cocoa, respectively. The agency advises that it proposed (56 FR 60421, November 27, 1991) that the taerm "high" could be used to emphasize the presence of a certain nutrient when a food contains 20 percent or more of the Reference Daily Intake or Daily Reference Value for that nutrient. FDA believes that the use of the term "high" provides an opportunity to call attention to the positive aspects of the nutrient content of a food and to aid consumers in planning more healthful diets. The agency did not consider the need to provide for the use of the term "high" to describe fat content. In addition, FDA has not provided for the use of the term "medium" to describe nutrient content.

FDA believes it would be inappropriate to amend the cocoa standards in §§ 163.112, 163.113, and 163.114 before final regulations for nutrient content claims are established. However, if the nutrient content claims proposals are finalized as proposd, FDA may initiate rulemaking to revise the nomenclature or cacao fat content requirements, or both, for standardized cocoas to conform to the requirements of the new regulations.

FDA invites comment on: (1) The need to retain "high fat cocoa" and "medium fat cocoa" as alternative names for breadfast cocoa and cocoa in §§ 163.112 and 163.113, respectively; (2) the need to maintain three separate standards for cocoa products; (3) the need to retain the existing cacao fat content requirements versus establishing new requirements, such as, 3 percent cacao fat as the maximum cacao fat content requirement in lowfat cocoa.

III. Economic Impact

Because this proceeding no longer involves formal rulemaking, the agency has conducted an economic assessment according to Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601). Executive Order 12291 compels Federal agencies to use cost-benefit analysis as a component of decisionmaking. The Regulatory Flexibility Act requires regulatory relief for small businesses where feasible. Because no marginal costs are expected to be incurred, the agency finds that this tentative final rule is not a major rule as defined by Executive Order 12291. In accordance with the Regulatory Flexibility Act (Pub. L. 96–354), in the proposal, FDA announced its tentative determination that this action will not have a significant adverse impact on a substantial number of small businesses. The agency did not receive any comments on this tentative determination.

The costs arising from this regulation are the economic opportunity costs arising from separate decisions that the agency must make. One option would be no action, which would mean that manufacturers of cacao products would continue to produce products that

conform to the existing standards, regardless of the availability of new ingredients or technologies. The second option would be to eliminate all cacao product standards which is not practicable at this time. The cacao standards have provided a benchmark of quality which has historically served industry and consumers. Additionally, under existing Federal laws (the 1990 amendments), removal of Federal food standards would allow each State to establish their own food standards which could inhibit interstate trade. The third option, amending the cacao products standards as proposed, would increase flexibility and allow for innovation.

The benefits of this regulation are to allow manufacturers to take advantage of new ingredients and technologies and to develop a wider variety of cacao products with a broad range of physical characteristics. Consumers will benefit from increased product choices and, potentially, lower manufacturing costs. Increased flexibility (e.g., providing for functional group designations rather than specifically listing ingredients in the standards) also reduces the costs associated with updating the standards to keep current with technology.

Because firms will not be required to change existing labels, FDA finds that there are no marginal costs of this regulation. This action is also expected to facilitate international trade by providing for products with a wider range of desired characteristics and by making the standards more consistent with the Codex International Standards for Chocolate and for Cocoa Powders (Cocoas) and Dry Cocoa—Sugar Mixtures.

IV. Environmental Impact

As stated in the January 25, 1989, proposal, the agency has determined under 21 CFR 25.24(b)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required. FDA has not received any new information or comments that would alter its previous determination.

V. Request for Comments

Interested persons may, on or before July 6, 1992, submit to the Dockets Management Branch (address above) written comments regarding section II.A. of this tentative final rule, and by August 4, 1992, written comments on section II.B. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received commenfs may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 163

Cacao products, Food grades and standards, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, it is proposed that 21 CFR part 163 be revised to read as follows:

PART 163—CACAO PRODUCTS

Subpart A—General Provisions

Sec.

Subpart B—Requirements for Specific Standardized Cacao Products

Authority: Secs. 201, 301, 401, 403, 403A, 409, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 341, 343, 348, 371, 376).

Subpart A—General Provisions

§ 163.5 Methods of analysis.

Shell and cacao fat content in cacao products shall be determined by the following methods of analysis, prescribed in "Official Methods of Analysis of the Association of Official Analytical Chemists," which are incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Association of Official Analytical Chemists, 2200 Wilson Blvd., suite 400, Arlington, VA 22201–3301, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC.

(a) Shell content—12th ed. (1975), sections 13.010–13.014, under the heading "Shell in Cacao Nibs—Official Final Action," pp. 208–210.

(b) Fat content—15th ed. (1990), methods 963.15, under the heading "Fat in Cacao Products—Soxhlet Extraction Method—Final Action, 1973," pp. 770–771.

Subpart B—Requirements for Specific Standardized Cacao Products

§ 163.110 Cacao nibs.

(a) *Description.* (a) Cacao nibs is the food prepared by removing the shell from cured, cleaned, dried, and cracked cacao beans. The cacao shell content is not more than 1.75 percent by weight, calculated on an alkali-free basis, as determined by the method prescribed in § 163.5(a).

(2) The cacao nibs, or the cacao beans from which they are prepared, may be processed by heating with one or more of the optional alkali ingredients specified in paragraph (b)(1) of this section.

(3) The cacao nibs, or the cacao beans from which they are prepared, as appropriate, may be further processed with one or more of the optional neutralizing agents specified in paragraph (b)(2) of this section.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) Alkali ingredients. Ammonium, potassium, or sodium bicarbonate, carbonate, or hydroxide, or magnesium carbonate or oxide, added as such, or in aqueous solution. For each 100 parts by weight of cacao nibs, used as such, or before shelling from the cacao beans, the total quantity of alkali ingredients used is not greater in neutralizing value (calcualted form the respective combined weights of the alkali ingredients used) than the neutralizing value of 3 parts by weight of anhydrous potassium carbonate.

(2) Neutralizing agents. Phosphoric acid, citric acid, and *L*-tartaric acid, added as such, or in aqueous solution. For each 100 parts by weight of cacao nibs, used as such, or before shelling from the cacao benas, the total quantity of phosphoric acid used is not greater than 0.5 parts by weight, expressed as P_2O_5. The total amount, singly or in combination, of citric acid and *L*-tartaric acid is not greater than 1.0 part by weight.

(c) *Nomenclature.* The name of the food is "cacao nibs", "cocoa nibs", or "cracked cocoa".

(1) When the cacao nibs, or the cacao beans from which they are prepared, are processed with alkali ingredients specified in paragraph (b)(1) of this section, the name of the food shall be accompanied by the statement

"Processed with alkali" or "Processed ____", the blank being filled in with the common or usual name of the specific alkali ingredient used in the food.

(2) When the cacao nibs, or the cacao beans from which they are parpared, are processed with neutralizing agents specified in paragraph (b)(2) of this section, the name of the food shall be accompanied by the statement "Processed with neutralizing agent" or "Processed with ____", the blank being filled in with the common or usual name of the specific neutralizing agent used in the food.

(3) Whenever the name of the food appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the statements prescribed in paragraphs (c)(1) and (c)(2) of this section shall precede or follow the name without intervening printed or graphic matter.

§ 163.111 Chocolate liquor.

(a) *Description.* (1) Chocolate liquor is the solid or semiplastic food prepared by finely grinding cacao nibs. The fat content of the food may be adjusted by adding one or more of the optional ingredients specified in paragraph (b)(1) of this section to the cacao nibs. Chocolate liquor contains not less than 50 percent nor more than 60 percent by weight of cacao fat as determined by the method prescribed in § 163.5(b).

(2) Optional alkali ingredients specified in paragraph (b)(2) of this section may be used as such in the preparation of chocolate liquor under the conditions and limitations specified in § 163.110(b)(1).

(3) Optional neutralizing agents specified in paragraph (b)(3) of this section may be used as such in the preparation of the chocolate liquor under the conditions and limitations specified in § 163.110(b)(2).

(4) Chocolate liquor may be spiced, flavored, or seasoned with one or more of the ingredients listed in paragraph (b)(4), (b)(5), and (b)(6) of this section.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) Cacao fat and cocoas (breakfast cocoa, cocoa, or lowfat cocoa);

(2) Alkali ingredients—Ammonium, potassium, or sodium bicarbonate, carbonate, or hydroxide, or magnesium carbonate or oxide, added as such, or in aqueous solution;

(3) Neutralizing agents—Phosphoric acid, citric acid, and *L*-tartaric acid, added as such or in aqueous solution;

(4) Spices, natural and artificial flavorings, gound whole nut meats, ground coffee, dried malted cereal extract, and other seasonings that do not either singularly or in combination impart a flavor that imitates the flavor of chocolate, milk, or butter;

(5) Butter or milkfat; or

(6) Salt.

(c) *Nomenclature.* The name of the food is "chocolate liquor", "chocolate", "unsweetened chocolate", "bitter chocolate", "baking chocolate", "cooking chocolate", "chocolate coating", or "unsweetened chocolate coating".

(1) When any optional alkali ingredient specified in paragraph (b)(2) of this section is used, including those used in the preparation of the cacao nibs and cocoas from which the chocolate liquor was prepared, the name of the food shall be accompanied by the statement "Processed with alkali" or "Processed with ____", the blank being filled in with the common or usual name of the specific alkali ingredient used in the food.

(2) When any optional neutralizing agent specified in paragraph (b)(3) of this section is used, including those used in the preparation of the cacao nibs and cocoas from which the chocolate liquor was prepared, the name of the food shall be accompanied by the statement "Processed with neutralizing agent" or "Processed with ____", the blank being filled in with the common or usual name of the specific neutralizing ingredient used in the food.

(3) When one or more Spices, flavorings, or seasonings specified in paragraphs (b)(4) and (b)(5) of this section is used in the chocolate liquor, the label shall bear an appropriate statement, e.g., "spice added", "Flavored with ____", "Seasoned with ____", or "With ____ added", the blank being filled in with the common or usual name of the spice, flavoring, or seasoning used, in accordance with § 101.22 of this chapter.

(4) When two or more of the statements set forth in this paragraph are required, such statements may be combined in a manner that is appropriate, but not misleading.

(5) Whenever the name of the food appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the statements prescribed in this section, showing optional ingredients used, shall precede or follow the name without intervening printed or graphic matter.

§ 163.112 Breakfast cocoa.

(a) *Description.* (1) Breakfast cocoa is the food prepared by pulverizing the material remaining after part of the cocoa fat has been removed from cocao nibs. Breakfast cocoa contains not less than 22 percent by weight of cacao fat as determined by the method prescribed in § 163.5(b).

(2) Optional alkali ingredients specified in paragraph (b)(1) of this section may be used as such in the preparation of breakfast cocoa under the conditions and limitations specified in § 163.110(b)(1).

(3) Optional neutralizing agents specified in paragraph (b)(2) of this section may be used as such in the preparation of the breakfast cocoa under the conditions and limitations specified in § 163.110(b)(2).

(4) Braeakfast cocoa may be spiced, flavored, or seasoned with one or more of the ingredients listed in paragraphs (b)(3) and (b)(4) of this section.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) Alkali ingredients—Ammonium, potassium, or sodium bicarbonate, carbonate, or hydroxide, or magnesium carbonate or oxide, used as such or in aqueous solution;

(2) Neutralizing agents—Phosphoric acid, citric acid, and *L*-tartaric acid, used as such or in aqueous solution;

(3) Spices, natural and artificial flavorings, and other seasonings that do not either singularly or in combination impart a flavor that imitates the flavor of chocolate, milk, or butter; or

(4) Salt.

(c) *Nomenclature.* The name of the food is "breakfast cocoa", or "high fat cocoa".

(1) When any optional alkali ingredient specified in paragraph (b)(1) of this section is used, including those used in the preparation of the cacao nibs from which the breakfast cocoa was prepared, the name of the food shall be accompained by the statement "Processed with alkali" or "Processed with ____", the blank being filled in with the common or usual name of the specific alkali ingredient used in the food.

(2) When any optional neutralizing agent specified in paragraph (b)(2) of this section is used, including those used in the preparation of the cacao nibs from which the breakfast cocoa was prepared, the name of the food shall be accompained by the statement "Processed with neutralizing agent" or "Processed with ____", the blank being filled in with the common or usual name of the specific neutralizing agent used in the food.

(3) When one or more of the spices, flavorings, or seasonings specified in paragraph (b)(3) of this section is used in the breakfast cocoa, the label shall bear an appropriate statement, e.g., "Spice added", "Flavored with ____", or

"With ____ added", the blank being filled in with the common or usual name of the spice, flavoring, or seasoning used, in accordance with § 101.22 of this chapter.

(4) When two or more of the statements set forth in this paragraph are required, such statements may be combined in a manner that is appropriate, but not misleading.

(5) Whenever the name of the food appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the statements prescribed in this paragraph showing optional ingredients used shall precede or follow the name without intervening printed or graphic matter.

§ 163.113 Cocoa.

(a) *Description.* Cocoa is the food that conforms to the definition and standard of identity, and is subject to the requirements for label declaration of ingredients for breakfast cocoa in § 163.112, except that the cacao fat content is less than 22 percent, but not less than 10 percent by weight, as determined by the method prescribed in § 163.5(b).

(b) *Nomenclature.* The name of the food in "cocoa" or "medium fat cocoa".

§ 163.114 Lowfat cocoa.

(a) *Description.* Lowfat cocoa is the food that conforms to the definition and standard of identity, and is subject to the requirements for label declaration of ingredients for breakfast cocoa in § 163.112, except that the cacao fat content is less than 10 percent by weight, as determined by the method prescribed in § 163.5(b).

(b) *Nomenclature.* The name of the food is "lowfat cocoa".

§ 163.117 Cocoa with dioctyl sodium sulfosuccinate for manufacturing.

(a) *Description.* Cocoa with dioctyl sodium sulfosuccinate for manufacturing is the food additive complying with the provisions precribed in § 172.520 of this chapter. It conforms to the definition and standard of identity for breadkfast cocoa in § 163.112, or for cocoa in § 163.113, or for lowfat cocoa in § 163.114, except that the food additive contains dioctyl sodium sulfosuccinate (complying with the requirements of § 172.810 of this chapter, including the limit of not more than 0.4 percent by weight of the finished food additive).

(b) *Nomenclature.* The name of the food additive is "cocoa with dioctyl sodium sulfosuccinate for manufacturing" to which is added any modifier of the word "cocoa" required by the definition and standard of identity to which the food additive otherwise conforms. When the food additive is used in a fabricated food, the phrase "for manufacturing" may be omitted from any declaration of ingredients required under § 101.4 of this chapter.

163.123 Sweet chocolate.

(a) *Description.* (1) Sweet chocolate is the solid or semiplastic food prepared by intimately mixing and grinding chocolate liquor with one or more optional nutritive carbohydrate sweeteners, and may contain one or more of the other optional ingredients specified in paragraph (b) of this section.

(2) Sweet chocolate contains not less than 15 percent by weight of chocolate liquor complying with the requirements of § 163.111, as calculated by subtracting from the weight of the chocolate liquor used the weight of the cacao fat therein and the weights therein of any alkali, neutralizing, and seasoning ingredients, and multiplying the remainder by 2.2, dividing the result by the weight of the finished sweet chocolate, and multiplying the quotient by 100. The finsished sweet chocolate, contains less than 12 percent by weight of total milk solids.

(3) Semisweet chocolate or bittersweet chocolate is sweet chocolate that contains not less than 35 percent by weight of chocolate liquor complying with the requirements of § 163.111 and calculated in the same manner as set forth in paragraph (a)(2) of this section.

(4) Cacao fat is determined by the method prescribed in § 163.5(b).

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) Cacao fat;

(2) Nutritive carbohydrate sweeteners;

(3) Spices, natural and artificial flavorings, ground whole nut meats, ground coffee, dried malted cereal extract, salt, and other seasoning that do not either singularly or in combination impart a flavor that imitates the flavor of chocolate, milk, or butter;

(4) Dairy ingredients:

(i) Cream, milkfat, butter;

(ii) Milk, concentrated milk, evaported milk, sweetened condensed milk, dried milk;

(iii) Skim milk, concentrated skim milk, evaporated skim milk, sweetened condensed skim milk, nonfat dry milk;

(iv) Concentrated buttermilk, dried buttermilk; and

(v) Malted milk; or

(5) Emulsifying agents, used singly or in combination, the total amount of which does not exceed 1.0 percent by weight.

(c) *Nomenclature.* The name of the food is "sweet chocolate", "sweet chocolate coating", "semisweet chocolate", "semisweet chocolate coating", "bittersweet chocolate", or "bittersweet chocolate coating", as appropriate.

(1) When optional alkalizing ingredients are used in the preparation of the chocolate liquor or the cacao nibs from which the chocolate was prepared, the label shall bear the statement "Processed with alkali" or "Processed with _____", the blank being filled in with the common or usual name of the specific alkali ingredient used in the food.

(2) When optional neutralizing agents are used in the preparation of the chocolate liquor or the cacao nibs from which the chocolate was prepared, the label shall bear the statement "Processed with neutralizing agents" or "Processed with _____", the blank being filled in with the common or usual name or usual name of the specific neutralizing agency used in the food.

(3) When one or more of the spices, flavorings, or seasonings specified in paragraph (b)(3) of this section is used in the breadkfast cocoa, the label shall bear an appropriate statement, e.g., "Spice added," "Flavored with _____", or "With _____ added", the blank being filled in with the common or usual name of the spice, flavoring, or seasoning used, in accordance with § 101.22 of this chapter.

(4) When two or more of the statements set forth in this paragraph are required, such statements may be combined in a manner that is appropriate, but not misleading.

(5) Whenever the name of the food appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the statements prescribed in this paragraph showing optional ingredients used shall precede or follow such name without intervening printed or graphic matter.

§ 163.130 Milk chocolate.

(a) *Description.* (1) Milk chocolate is the solid or semiplastic food prepared by intimately mixing and grinding chocolate liquor with one or more of the optional dairy ingredients and one or more optional nutritive carbohydrate sweeteners, and may contain one or more of the other optional ingredients specified in paragraph (b) of this section.

(2) Milk chocolate contains not less than 10 percent by weight of chocolate liquor complying with the requirements of § 163.111 as calculated by subtracting from the weight of the chocolate liquor

used the weight of cacao fat therein and the weights of alkali, neutralizing and seasoning ingredients, multiplying the remainder by 2.2, dividing the result by the weight of the finished milk chocolate, and multiplying the quotient by 100. The finished milk chocolate contains not less than 3.39 percent by weight of milkfat and not less than 12 percent by weight of total milk solids.

(b) *Optional ingredients.* The following safe and suitable ingredients may be used:

(1) Cacao fat;

(2) Nutritive carbohydrate sweeteners;

(3) Spices, natural and artifical flavorings, ground whole nut meats, ground coffee, dried malted cereal extract, salt, and other seasonings that do not either singularly or in combination impart a flavor that imitates the flavor of chocolate, milk, or butter;

(4) Dairy ingredients:

(i) Cream, milkfat, butter;

(ii) Milk, concentrated milk, evaporated milk, sweetened condensed milk, dried milk; and

(iii) Skim milk, concentrated skim milk, evaporated skim milk, sweetened condensed skim milk, nonfat dry milk; or

(5) Emulsifying agents, used singly or in combination, the total amount of which does not exceed 1.0 percent by weight.

(c) *Nomenclature.* The name of the food is "milk chocolate" or "milk chocolate coating".

(1) When optional alkali ingredients are used in the preparation of the chocolate liquor or the cacao nibs from which the milk chocolate was prepared, the label shall bear the statement "Processed with alkali" or "Processed with ____", the blank being filled in with the common or usual name of the specific alkali ingredient used in the food.

(2) When optional neutralizing agents are used in the preparation of the chocolate liquor or the cacao nibs from which the milk chocolate was prepared, the label shall bear the statement "Processed with neutralizing agents" or "Processed with ____", the blank being filled in with the common or usual name of the specific neutralizing agent used in the food.

(3) When one or more of the spices, flavorings, or seasonings specified in paragraph (b)(3) of this section is used in the breakfast cocoa, the label shall bear an appropriate statement, e.g., "Spice added", "Flavored with ____", or "With ____ added", the blank being filled in with the common or usual name of the spice, flavoring, or seasoning used, in accordance with § 101.22 of this chapter.

(4) When two or more of the statements set forth in this paragraph are required, such statements may be combined in a manner that is appropriate, but not misleading.

(5) Whenever the name of the food appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the statements prescribed in this paragraph showing optional ingredients used shall precede or follow such name without intervening printed or graphic matter.

§ 163.135 Buttermilk chocolate.

(a) *Description.* Buttermilk chocolate is the food that conforms to the standard of identity, and is subject to the labeling requirements, for milk chocolate in § 163.130, except that:

(1) The optional dairy ingredients are limited to sweet cream buttermilk, concentrated sweet cream buttermilk, dried sweet cream buttermilk, and any combination of these.

(2) The finished buttermilk chocolate contains less than 3.39 percent by weight of milkfat and not less than 12 percent by weight of sweet cream buttermilk solids.

(b) *Nomenclature.* The name of the food is "buttermilk chocolate", "buttermilk chocolate coating", "sweet buttermilk chocolate", "sweet buttermilk chocolate coating", "sweet cream buttermilk chocolate", or "sweet cream buttermilk chocolate coating".

§ 163.140 Skim milk chocolate.

(a) *Description.* Skim milk chocolate is the food that conforms to the standard of identity and is subject to the labeling requirements of milk chocolate in § 163.130, except that:

(1) The optional dairy ingredients are limited to skim milk, evaporated skim milk, concentrated skim milk, sweetened condensed skim milk, nonfat dry milk, and any combination of these.

(2) The finished skim milk chocolate contains less than 3.39 percent by weight of milkfat and not less than 12 percent by weight of skim milk solids.

(b) *Nomenclature.* The name of the food is "skim milk chocolate", "skim milk chocolate coating", "sweet skim milk chocolate", or "sweet skim milk chocolate coating".

§ 163.145 Mixed dairy product chocolates.

(a) *Description.* Mixed dairy product chocolates are the foods that conform to the standard of identity, and are subject to the labeling requirements, for milk chocolate in § 163.130, except that:

(1) The optional dairy ingredients for each of the foods are mixtures of two or more of the following:

(i) Any dairy ingredients specified in §163.130;

(ii) Any dairy ingredients specified in §163.135;

(iii) Any dairy ingredients specified in §163.140; or

(iv) Malted milk; and

(2) The finished mixed dairy product chocolates shall contain not less than 12 percent by weight of total milk solids derived from those dairy products referred to in paragraph (a) of this section and may contain less than 3.39 percent by weight of milkfat. The quantity of each component used in any such mixture is such that no component contributes less than one-third of the weight of the total milk solids contributed by that component which is used in the largest proportion.

(b) *Nomenclature.* The name of the food is "chocolate" or "chocolate coating", preceded by the designation of the type of milk ingredients used as prescribed in paragraph (a) of this section in the order of predominance by weight, e.g., "milk and skim milk chocolate".

§163.150 Sweet cocoa and vegetable fat coating.

(a) *Description.* Sweet cocoa and vegetable fat coating is the food that conforms to the standard of identity, and is subject to the labeling requirements, for sweet chocolate in §163.123, except that:

(1) In the preparation of the product, cocoa, or a mixture of cocoa and chocolate liquor is used in such quantity that the finished food contains not less than 6.8 percent by weight of nonfat cacao solids, calculated on a moisture-free basis;

(2) One or more optional ingredients specified in paragraph (b) of this section are used: and

(3) The requirement in §163.123(a)(2) limiting the total milk solids content to less than 12 percent by weight does not apply.

(b) *Optional ingredients.* (1) Breakfast cocoa, cocoa, lowfat cocoa;

(2) Chocolate liquor;

(3) Safe and suitable vegetable derived fats, oils, and stearins other than cacao fat. The fats, oils, and stearins may be hydrogenated;

(4) Safe and suitable dairy-derived ingredients; and

(5) Safe and suitable bulking agents, formulation aids, humectants, and texturizers.

(c) *Nomenclature.* The name of the food is "sweet cocoa and vegetable fat

coating." Alternatively, the common or usual name of the vegetable derived fat ingredient may be used in the name of the food e.g., "sweet cocoa and ____ oil coating", the blank being filled in with the common or usual name of the specific vegetable fat used.

§ 163.153 Sweet chocolate and vegetable fat coating.

(a) *Description.* Sweet chocolate and vegetable fat coating is the food that conforms to the standard of identity, and is subject to the labeling requirements, for sweet chocolate in § 163.123, except that one or more optional ingredients specified in paragraph (b) of this section are used. Compliance with the requirement in § 163.123(a)(2) limiting the total milk solids content to less than 12 percent by weight shall be calculated by including only those dairy ingredients referred to in § 163.123(b)(4).

(b) *Optional ingredients.* (1) Safe and suitable vegetable derived fats, oils, and stearins other than cacao fat. The fats, oils, and stearins may be hydrogenated;

(2) Safe and suitable dairy-derived ingredients; and

(3) Safe and suitable bulking agents, formulation aids, humectants, and texturizers.

(c) *Nomenclature.* The name of the food is "sweet chocolate and vegetable fat coating." Alternatively, the common or usual name of the vegetable derived fat ingredient may be used in the name of the food e.g., "sweet chocolate and ____ oil coating", the blank being filled in with the common or usual name of the specific vegetable fat used.

§ 163.155 Milk chocolate and vegetable fat coating.

(a) *Description.* Milk chocolate and vegetable fat coating is the food that conforms to the standard of identity, and is subject to the labeling requirements, for milk chocolate in § 163.130 or skim milk chocolate in § 163.140, except that one or more optional ingredients specified in paragraph (b) of this section are used. Compliance with the requirement in § 163.130(a)(2) that the product contains not less than 12 percent by weight of nonfat milk solids shall be calculated using only those dairy ingredients referred to in § 163.130(b)(4).

(b) *Optional ingredients.* (1) Safe and suitable vegetable derived oils, fats, and stearins other than cacao fat. The oils, fats, and stearins may be hydrogenated;

(2) Safe and suitable dairy-derived ingredients; and

(3) Safe and suitable bulking agents, formulation aids, humectants, and texturizers.

(c) *Nomenclature.* The name of the food is "milk chocolate and vegetable fat coating" or "skim milk chocolate and vegetable fat coating," as appropriate. Alternatively, the common or usual name of the vegetable derived fat ingredient may be used in the name of the food e.g., "milk chocolate and ____ oil coating", the blank being filled in with the common or usual name of the specific vegetable fat used.

Dated: May 8, 1992.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92-13032 Filed 6-4-92; 8:45 am]

BILLING CODE 4160-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 262, 264, and 268

[FRL 4137-4]

Public Meeting on the Hazardous Waste Identification Rule

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: EPA's Office of Solid Waste will conduct a Roundtable Discussion of the issues raised by its recently proposed Hazardous Waste Identification Rule (57 FR 21450, May 20, 1992). The proposed rule contained a number of different options for exempting low-toxicity wastes under Subtitle C of RCRA. The discussion will include: The advantages and disadvantages of the alternative conceptual approaches; EPA's specific information needs; and the utility of additional Roundtable Discussions.

DATES: The meeting will be held on June 15, 1992, and will begin at 8:30 a.m., and end at 5 p.m.

ADDRESSES: The meeting will be held at the Washington Hilton, 1919 Connecticut Avenue, NW., Washington, DC, 20009, (202) 483-3000.

FOR MORE INFORMATION CONTACT: For information on substantive matters, please contact William A. Collins, Jr., of the Waste Identification Branch, at (202) 260-4791. For information on administrative matters, or to advise of your intent to attend, please contact Michael Young or Denise Madigan, EPA's Roundtable Co-Conveners at (212) 725-6160, and (202) 429-8782, respectively.

Dated: May 29, 1992.

Deborah Dalton,

Deputy Director, Consensus and Dispute Resolution Program.

[FR Doc. 92-13099 Filed 6-4-92; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

46 CFR Part 510

[Docket No. 92-30]

Licensing of Ocean Freight Forwarders

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Maritime Commission proposes to amend its regulations in part 510 which govern the licensing, duties and responsibilities of ocean freight forwarders. The intent and purpose of the proposed amendments are to reduce financial and regulatory burdens on the ocean freight forwarder industry. The proposed rule would: (1) Remove the requirement that prior Commission approval be obtained for organizational changes involving the acquisition of one or more additional licensees by a licensee; (2) permit payment by personal check for Commission approval of organizational changes; and (3) permit the licensee's name to appear before or after the shipper's name when the licensee's name appears in the shipper identification box on the bill of lading. (The proposed rule also makes technical changes to reflect the redesignation of the Commission's Bureau of Tariffs to the Bureau of Tariffs, Certification and Licensing.)

DATES: Comments due July 6, 1992. Comments must be received at the Commission by the due date; the date of mailing will not be accepted as the date of filing in this proceeding.

ADDRESSES: Send comments (original and 15 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573-0001.

FOR FURTHER INFORMATION CONTACT: Seymour Glanzer, Director, Bureau of Hearing Counsel, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573-0001, (202) 523-5783.

SUPPLEMENTARY INFORMATION:

Background

The Federal Maritime Commission's ("Commission") regulations and procedures governing the licensing,

duties and responsibilities of ocean freight forwarders are set forth in 46 CFR part 510. The current regulations in part 510 were issued in 1984 to implement section 19 of the Shipping Act of 1964, 46 U.S.C. app. 1718, the successor provision to former section 44 of the Shipping Act, 1916, 46 U.S.C. 841b. Section 44 was enacted to correct abuses and inefficiencies in the ocean freight forwarder industry by requiring ocean freight forwarders to be licensed and regulated by the Commission. The 1984 regulations altered and streamlined the regulatory environment of the freight forwarding industry.

As a result of further experience with the regulations, the Commission has determined that certain revisions might be made to reduce the financial and regulatory burden on the ocean freight forwarder industry without loss of regulatory effectiveness. Accordingly, the following changes are proposed:

1. Approval for the Acquisition of One or More Additional Licensees by a Licensee

Section 510.19(a)(5) [1] requires prior approval of the Commission for a change, in an existing licensee's organization, involving the acquisition of one or more additional licensees. The Commission proposes to remove this requirement. Although prior approval for the acquisition of additional licensees will no longer be required, the Commission will require that the licensee notify the Commission of any such acquisition. Therefore, a clarifying paragraph to this effect will be added to § 510.19.

Payment of Application Fees for Approvals

Section 510.19(e) requires that the $100 processing fee for approval of organizational changes specified in paragraph (a) of this section be paid by money order, certified check, or cashier's check.[2] It is proposed that the method of payment be expanded to include payment by personal check. This change is intended to provide greater flexibility. However, should the personal check not be honored when presented for payment, processing of the approval of the status change or license transfer would be suspended until the processing fee is paid.

3. Disclosure of Principal

Section 510.23(a) [3] permits the licensee's name to appear in the shipper's identification box on the bill of lading, but suggests that the licensee's name may appear only after the shipper's name. This regulation is intended to ensure that the identity of the actual shipper be disclosed. Therefore, the position of the licensee's name becomes insignificant when the licensee is identified as the shipper's agent. Accordingly, it is proposed that the licensee's name be allowed to appear before or after the shipper's name in the shipper's box, provided the licensee is identified therein as the shipper's agent.

Although the Commission, as an independent regulatory agency, is not subject to Executive Order 12291, dated February 17, 1981, it nonetheless has reviewed the rule in terms of this Order and has determined that this rule is not a "major rule" because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effect on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Federal Maritime Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this Proposed Rule, if adopted, will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units or small governmental organizations.

This proposed rule does not contain any collection of information requirements that require submission to the Office of Management and Budget ("OMB"). Therefore, OMB review is not required.

List of Subjects in 46 CFR Part 510

Fees and user charges, Licensing, Ocean freight forwarders, Reporting and record keeping requirements, Surety bonds.

Therefore, pursuant to 5 U.S.C. 553 and sections 17 and 19 of the Shipping Act of 1984, 46 U.S.C. app. 1716 and 1718, part 510 of title 46, Code of Federal Regulations, is proposed to be amended as follows:

PART 510—[AMENDED]

1. The authority citation for part 510 continues to read:

Authority: 5 U.S.C. 553, 46 U.S.C. app. 1702, 1707, 1709, 1710, 1712, 1714, 1716, and 1718; 21 U.S.C. 853a.

§ 510.19 [Amended]

2. Section 510.19 is amended by deleting paragraph (a)(5) and by redesignating paragraphs (a)(6) and ()(7) as (a)(5) and (a)(6), respectively.

3. Section 510.19 is also amended by revising paragraph (e) by adding a new paragraph (f) to read as follows:

§ 510.19 Changes in organization

* * * * *

(e) *Application form and fee.* Applications for Commission approval of status changes or for license transfers under paragraph (a) of this section shall be filed in duplicate with the Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, on Form FMC–18, Rev., together with a processing fee of $100, made payable by money order, certified check, cashier's check or personal check to the Federal Maritime Commission. Should a personal check not be honored when presented for payment the processing of the application shall be suspended until the processing fee is paid.

(f) *Acquisition of one or more additional licensees.* In the event a licensee acquires one or more additional licensees, for the purpose of merger, consolidation, or control, the acquiring licensee shall advise the Commission of such change within thirty days after such change occurs by submitting in duplicate, an amended Form FMC–18, Rev. No application fee is required when reporting this change.

5. Section 510.23 is amended by revising paragraph (a) to read as follows:

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[1] Section 510.19 Changes in organization:

(a) The following changes in an existing licensee's organization require prior approval of the Commission:

* * * * *

(5) Acquisition of one or more additional licensees, whether for the purposes of merger, consolidation, or control.

[2] Section 510.19(e) Application form and fee:

Applications for Commission approval of status changes or for license transfers under paragraph (a) of this section shall be filed in duplicate with the Director, Bureau of Tariffs (now the Bureau of Tariffs, Certification and Licensing), Federal Maritime Commission, on Form FMC–18, Rev., together with a processing fee of $100, made payable by money order, certified check, or cashier's check to the Federal Maritime Commission.

[3] Section 510.23(a) Disclosure of principal:

The identity of the shipper must always be disclosed in the shipper identification box on the bill of lading. The licensee's name may appear after the name of the shipper, but the licensee must be identified as the shipper's agent.

§ 510.23. Forwarder and carrier; compensation.

(a) *Disclosure of principal.* The identity of the shipper must always be disclosed in the shipper identification box on the bill of lading. The licensee's name may appear with the name of the shipper, but the licensee must be identified as the shipper's agent.

* * * * *

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92-13232 Filed 6-4-92; 8:45 am]

BILLING CODE 6730-01-M

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46 CFR Part 525 and 530

[Docket No. 92-29]

Notice of Inquiry; Free Time and Demurrage Charges on Import Property at the Port of New York; Truck Detention at the Port of New York

AGENCY: Federal Maritime Commission.

ACTION: Notice of Inquiry.

SUMMARY: The Federal Maritime Commission solicits public comment on whether its current regulations concerning free time and demurrage charges on import property and truck detention at the Port of New York are still necessary.

DATE: Comments due July 6, 1992. Comments must be received at the Commission by the due date; the date of mailing will not be accepted as the date of filing in this proceeding.

ADDRESSES: Comments (original and 15 copies) are to be submitted to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5725.

FOR FURTHER INFORMATION CONTACT: Bryant L. VanBrakle, Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5796.

SUPPLEMENTARY INFORMATION: Parts 525 and 530 were promulgated pursuant to section 17 of the Shipping Act, 1916 ("1916 Act"), 46 U.S.C. app. 816, which authorizes the Federal Maritime Commission ("Commission") to prescribe and order enforced just and reasonable regulations and practices relating to or connected with the receiving, handling, storing or delivering of property. The Commission continued parts 525 and 530 when Congress amended the 1916 Act by enacting the Shipping Act of 1984, 46 U.S.C. app. 1701 *et seq.* A review of Parts 525 and 530 brings into question whether they remain necessary.

Part 525

Part 525 (formerly part 526) defines "adequate" free time for import property at New York to be five days, and prescribes that free time for such property shall be not less than five days, absent special circumstances. The rule also prescribes the method of assessing demurrage charges.

Part 525 was an outgrowth of certain traffic congestion conditions at the Port of New York ("Port"). It is applicable only to general cargo moving through the Port. It is possible that part 525 may have outlived its usefulness. The Commission last reviewed part 525 in Docket No. 73-55, Uniform Rules and Regulations Governing Free Time on Import Containerized Cargo at the Port of New York, 20 F.M.C. 688, 679 (1978) [1]. With the passage of time, the congestion conditions which led to the original issuance of the rule may have changed. Furthermore, because so much cargo is now containerized and not covered by this regulation, it appears that there may be little justification for retaining the present rules. The industry has not recently reported any problems to the Commission related to congestion at the Port.

Therefore, the Commission invites interested parties to comment on what compelling regulatory need exists for this Commission rule on free time and demurrage charges at the Port.

Part 530

Part 530 (formerly part 551) arose from Docket No. 72-41, Truck Detention at the Port of New York, 19 F.M.C. 25 (1975). In that proceeding, as well as those that preceded it,[2] the Commission determined that there were unreasonable delays in the handling and interchange of freight between ocean and motor carriers at the Port. The Commission, therefore, promulgated the rule in 1975 to establish a uniform and equitable system to ameliorate congestion at the Port, with disputes concerning claims for penalties to be settled by an adjudicator selected by the Commission. The rule sets forth appointment/non-appointment procedures to be followed by motor carriers and terminal operators (and other import/export agents) whose actions or inactions could impede the pickup and delivery of cargo by motor carriers at marine facilities within the Port.

Five years have transpired since the Commission last examined the rule, in Docket No. 86-20, Truck Detention at the Port of New York—Increase in Penalty Charges.[3] Again because transportation circumstances which prompted the rule may have changed, the Commission also seeks comments on the continuing regulatory need for part 530.

Commenting parties are requested to accompany their submissions, where appropriate, with documents, factual examples, or descriptions of experience illustrating their remarks. If, for example, certain benefits for retaining part 525 and/or part 530 are alleged, specific data or factual examples in support of the alleged benefits realized should be provided.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92-13233 Filed 6-4-92; 8:45 am]

BILLING CODE 6730-01-M

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[1] In that proceeding, the Commission determined that this regulation does not apply to containerized cargo.

[2] Truck and Lighter Loading and Unloading Practices at New York Harbor, 9 F.M.C. 505 (1966) (Affirmed in *American Export Isbrandtsen* v. *F.M.C.*, 389 F. 2d 962 (D.C. Cir. 1968); Truck and Lighter Loading and Unloading Practices at New York Harbor, 12 F.M.C. 166 (1969).

[3] Proposed rule, 51 FR 18622 (May 21, 1986); final rule, 52 FR 2703 (January 26, 1987). The notice of proposed rulemaking in Docket No. 86-20 also requested comment on whether a continuing need existed for the rule. Four of the five commenters in that proceeding supported continuation of the rule.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2, and 21

[PR Docket No. 92-80, FCC 92-173]

Use of the Frequencies in the 2.1 and 2.5 GHz Bands

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has adopted a notice of proposed rule making soliciting public comment on a range of proposals designed to reduce the delays associated with the processing of applications for stations in the Multichannel Distribution Service and the Multichannel Multipoint Distribution Service (MDS/MMDS). Specifically, under consideration are proposals to: (1) Reorganize various aspects of the MDS processing and regulatory scheme, (2) streamline the rules and technical standards governing MDS operations, and (3) remedy several difficulties that have arisen with respect to MDS/MMDS

processing by modifying existing processing procedures. The purpose of these proposals is to allow entities licensed in the MDS/MMDS, particularly wireless cable operators, to realize their competitive potential.

DATES: Comments must be filed on or before June 29, 1992 and reply comments must be filed on or before July 14, 1992.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Karen Kincaid, (202) 634–2443, Private Radio Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's notice of proposed rule making, PR Docket No. 92–80, FCC 92–173, adopted April 9, 1992, and released May 8, 1992. The full text of this notice of proposed rule making is available for inspection and copying during normal business hours in the FCC Dockets Branch, room 230, 1919 M Street NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, Washington, DC 20036, telephone (202) 452–1422.

Summary of Notice of Proposed Rule Making

1. The competitive potential of wireless cable operators licensed in the MDS/MMDS remains largely unrealized to a substantial extent because approximately 20,000 MDS applications, some dating back as far as 1980 and 1983, remain pending before the Commission. This large and aging backlog is the result of the interplay between the Commission's existing MDS/MMDS processing rules and policies, which are extremely complex, the fact that the Commission has been unable to allocate sufficient resources to the processing of MDS/MMDS applications, and a torrent of MDS/MMDS filings, the majority of which are believed to be speculative. The impact of this backlog on the wireless cable industry has been devastating. Wireless cable operators have been unable to gain access to the number of channels necessary for them to meet subscriber demand and match competitors' offerings. Meanwhile, delays in the processing of MDS/MMDS applications have allowed traditional cable systems to further strengthen their position in the multichannel video distribution marketplace, making the task of providing meaningful competition more difficult for rival operators. The Commission has initiated the instant proceeding with the primary objective of facilitating the licensing of MDS/MMDS services, thereby hopefully reversing these trends.

2. First, the Commission is considering various proposals to reorganize the MDS/MMDS processing and regulatory scheme. Specifically, the Commission developed four options to this effect:

(1) To relocate some or all aspects of the processing of MDS/MMDS applications to the Private Radio Bureau's Licensing Division in Gettysburg, Pennsylvania, and to have either the Common Carrier Bureau or the Mass Media Bureau process the remaining aspects and regulate the service,

(2) To relocate both MDS/MMDS processing and regulation to the Private Radio Bureau,

(3) To relocate MDS/MMDS processing and regulation entirely to the Mass Media Bureau, and

(4) To leave both MDS/MMDS processing and regulation in the Common Carrier Bureau.

3. In addition, regardless of which Bureau processes and/or regulates the MDS, the Commission is also considering the adoption of certain new rules and technical standards to be used to govern MDS/MMDS operations. In developing each of the suggested rule changes, the Commission attempted to balance in an equitable manner the interests of existing MDS/MMDS operators as well as those of MDS/MMDS applications. Commenters are explicitly asked to discuss the impact on both of these groups of each rule change under consideration.

4. First, the Commission stated that it is possible that the processing of MDS/MMDS applications could be expedited by modifying the interference protection criteria currently contained in 47 CFR 21.902. As a possible alternative, the Commission suggested the use of simple mileage separation standards. The Commission solicited commenters' views on all aspects of this suggestion. In addition, either in conjunction with the suggested separation standards or as an alternative thereto, the Commission requests commenters to discuss whether the Commission should adopt a table to facilitate short-spacing of MDS/MMDS stations. The Commission devised a proposed short-spacing table, and asked commenters to discuss the permissible separations reflected therein, as well as to suggest alternatives. The Commission also asked commenters to discuss the relative merits of a proposal to retain the existing co- and adjacent channel interference criteria, and to address the impact that the retention of these standards would have on the goal of expediting the processing of both backlogged and new MDS/MMDS applications.

5. The Commission is also considering replacing the requirements currently set forth in 47 CFR 21.15(a) and 21.900, pursuant to which an MDS applicant must demonstrate (1) that the applicant is legally, financially, technically, and otherwise qualified to render the proposed service; (2) that there are frequencies available to enable the applicant to render satisfactory service; and (3) that the applicant has a station site available, with a certification that these things are true. The Commission solicits commenters' views on these suggestions, and requests commenters to address whether some of these requirements should simply be eliminated altogether.

6. In addition, to deter the filing of speculative applications, the Commission is considering disallowing settlement agreements among MDS/MMDS applicants, and prohibiting applicants from holding any type of interest, including serving as an officer, director, shareholder, trustee, beneficiary, owner, general or limited partner, or similar position, in more than one application for the same channel or channels as sites within the same service area.

7. The Commission is also entertaining several interim measures to be used solely for the purpose of processing the backlog of pending MDS/MMDS applications. First, the Commission imposed a short-term, temporary freeze on the filing of all applications for MDS/MMDS channels, effective immediately upon adoption of the notice of proposed rule making. Accordingly, as of April 9, 1992, no initial applications for new stations on these channels will be accepted for filing, at least during the pendency of this rule making.

8. Next, to permit the expeditious processing of the backlog of MDS applications, the Commission is considering certain special procedures to be applied to pending applications, including applications of tentative selectees, that, because they contain settlement agreements or other prelottery requests, would ordinarily require individualized review by Commission staff. Because these new rules and procedures would be prospectively applied to all pending MDS/MMDS applications, applicants would be afforded a limited opportunity, during the fourteen-day period commencing on the effective date of the new rules, to amend their applications to take the new rules into consideration or otherwise put their applications in conformity therewith.

9. Finally, irrespective of where MDS/MMDS processing. Both of these proposals are designed to facilitate the effective processing of both backlogged and future MDS/MMDS applications.

Initial Regulatory Flexibility Analysis

Reason for Action

This rule making proceeding is being initiated to obtain comment regarding proposals to modify the existing rules and policies pertaining to applicants, conditional licensees and licensees in the MDS/MMDS.

Objectives

The purpose of this rule making is two-fold: (1) To expedite the provision of the various services offered on MDS frequencies to the public, and (2) to increase administrative efficiency in the processing of MDS applications.

Legal Basis

The proposed action is authorized under sections 4(i), 4(j) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r). 313 and 314.

Reporting, Recordkeeping and Other Compliance Requirements

Generally, the proposed rule changes reduce the reporting and recordkeeping burden on applicants. The amendment of certain applications may, however, be necessitated in order for applicants to bring their applications into compliance with any new rules.

Federal Rules that Overlap, Duplicate or Conflict with these Rules

None.

Description, Potential Impact, and Number of Small Entities Involved

The rule changes proposed in this proceeding could affect certain small entities in the wireless cable industry, or small entities that otherwise use MDS/MMDS spectrum. After evaluating the comments, the Commission will further examine the impact of any rule changes on small entities and set forth our findings in the Final Regulatory Flexibility Analysis.

Any Significant Alternatives Minimizing the Impact on Small Entities Consistent With the Stated Objectives

None.

List of Subjects

17 CFR Part 1

Communications common carriers.

17 CFR Part 2

Reporting and recordkeeping requirements.

List of Subjects in 47 CFR Part 21

Multipoint distribution service, Communications Common Carriers.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-13139 Filed 6-4-92; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 92-28; Notice 1]

RIN 2127-AB85

Federal Motor Vehicle Safety Standards; Head Impact Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of intent.

SUMMARY: The purpose of this document is to announce that NHTSA will publish a notice of proposed rulemaking (NPRM) concerning improved head impact protection from interior components of passenger cars, i.e., roof rails, pillars and front headers, by January 31, 1993. This rulemaking action and notice of a publication date for the NPRM are required by the NHTSA Authorization Act of 1991.

FOR FURTHER INFORMATION CONTACT: Mr. William Fan, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-4922).

SUPPLEMENTARY INFORMATION: The NHTSA Authorization Act of 1991 requires the agency to address several matters through rulemaking. One of these matters, set forth in section 2503 of the Act, is improved head impact protection from interior components of passenger cars, i.e., roof rails, pillars and front headers.

Section 2502 of the Act generally provides that NHTSA must publish, no later than May 31, 1992, an advance notice of proposed rulemaking (ANPRM) or a notice of proposed rulemaking (NPRM) concerning improved head protection. However, the section also provides that if the agency is unable to meet that deadline, it must publish a notice indicating that it will publish an ANPRM or NPRM by a certain date which is not later than January 31, 1993. The agency is also required to indicate the reasons for the delay. NHTSA is publishing this notice of intent to announce that it is unable to meet the May 31, 1992 deadline but will publish an NPRM by January 31, 1993.

NHTSA has been conducting research concerning improved head impact protection for several years. On August 19, 1988, the agency published in the **Federal Register** (53 FR 31712) an ANPRM which addressed this issue. NHTSA noted that almost one-half of all fatalities in passenger car side impacts occur as a result of head injuries. The agency indicated that while many head injuries occur as a result of ejection from the vehicle, a high percentage occur due to head/face impacts with vehicle interior components, such as the pillars and other structures supporting the roof.

In the August 1988 ANPRM, NHTSA states that it believed that various techniques, including the use of padding, may be available to reduce the severity of, and in some cases prevent, many head injuries. In particular, the agency discussed the possibility of padding pillars, roof rail components and window frames with hard rubber or high density foam materials. NHTSA indicated that there are a number of possible approaches to expressing performance requirements, including placing limits on head acceleration during specified component tests using a headform impactor.

NHTSA has continued to conduct research since publishing the August 1988 ANPRM and believes that it is appropriate to publish an NPRM on improved head impact protection. As discussed below, however, there are several reasons why the agency cannot publish such a document by May 31, 1992.

First, the agency has not yet completed its analysis and documentation for many of the tests it has already completed. NHTSA has conducted impact tests of upper interior components of production vehicles using a free motion headform (FMH) impactor to assess injury potential. NHTSA has also conducted tests of padded upper interior components to evaluate the effectiveness of padding in reducing head impact severity. Given the large number of tests, NHTSA does not expect to complete its analysis and documentation of the tests until the fall of this year.

NHTSA is also still in the process of conducting certain tests and analyses. The agency is planning to conduct additional FMH-to-component impact tests using different thicknesses of padding, as part of analyzing the practicability of adding padding to existing vehicle interior components.

The agency is also continuing to analyze the possible effect of padding on neck injury risks. Auto manufacturers have expressed safety concerns in this area. NHTSA is also analyzing the issue of alternative headform impactors.

Finally, while NHTSA is well along in its research program, it will take considerable time for the agency to prepare the necessary documents for rulemaking, i.e., the NPRM itself, including specific proposed requirements, and the accompanying preliminary regulatory impact analysis. The additional time between May 31, 1992 and January 31, 1993 will enable the agency to complete the tests and analyses needed to support an NPRM for improved head impact protection, and to prepare the necessary rulemaking documents.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

Authority: 15 U.S.C. 1392, 1401, 1407; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: June 1, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92-13167 Filed 6-2-92; 11:12 am]

BILLING CODE 4910-59-M

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49 CFR Part 571

[Docket No. 88-06, Notice 18]

RIN 2127-AE49

Federal Motor Vehicle Safety Standards; Side Impact Protection—Light Trucks, Buses and Multipurpose Passenger Vehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: The purpose of this advance notice is to announce that NHTSA is considering the issuance of a proposal to extend its passenger car dynamic side impact requirements to light trucks, buses and multipurpose passenger vehicles, and to request comments to assist the agency in deciding whether, and if so how, to proceed with developing such a proposal. This rulemaking action is required by the NHTSA Authorization Act of 1991.

DATES: Comments must be received on or before August 4, 1992.

ADDRESSES: Comments should refer to the docket and notice numbers set forth above and be submitted (preferably in 10 copies) to the Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are from 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph Kanianthra, Chief, Side and Rollover Crash Protection Division, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-4924).

SUPPLEMENTARY INFORMATION:

Background

The NHTSA Authorization Act of 1991 requires the agency to address several matters through rulemaking. One of these matters, set forth in section 2503 of the Act, is the possible extension of the dynamic side impact protection requirements for passenger cars to multipurpose passenger vehicles (MPV's) and trucks with a gross vehicle weight rating (GVWR) of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less. These vehicles comprise a large majority of the vehicles referred to as "LTV's," which include trucks, buses and MPV's with a GVWR of 10,000 pounds or less. Under section 2502 of the Act, the rulemaking must be conducted under the general provisions of the National Traffic and Motor Vehicle Safety Act concerning safety standards.

This ANPRM is being published in response to the requirement in section 2502 that the agency must publish no later than May 31, 1992, an ANPRM or an NPRM concerning extending Standard No. 214's passenger car side impact protection requirements to LTV's. Upon publication of justification, this date may be delayed not more than 6 months.

Section 2502 also provides that this rulemaking action must be completed within 26 months of publishing the ANPRM. The rulemaking is considered completed when NHTSA either promulgates a final rule or decides not to promulgate a rule. In either case, the agency must publish its decision in the **Federal Register.**

NHTSA's side impact protection requirements are set forth in Federal Motor Vehicle Safety Standard No. 214, *Side Impact Protection.* The standard specifies two sets of requirements for passenger cars, (1) quasi-static side door strength requirements and (2) dynamic requirements.

Standard No. 214's quasi-static side door strength requirements, which have applied to passenger cars since January 1, 1973, seek to mitigate occupant injuries in side impacts by reducing the extent to which the side structure of a vehicle is pushed into the passenger compartment during a side impact. The requirements specify that side doors must resist crush forces that are applied against the door's outside surface in a laboratory test. NHTSA extended these requirements to LTV's in a final rule published in the **Federal Register** (56 FR 27427) on June 14, 1991.

NHTSA added Standard No. 214's dynamic requirements for passenger cars in a final rule published in the **Federal Register** (55 FR 45722) on October 30, 1990. Since the quasi-static side door strength requirements had been extended to LTV's well before the NHTSA Authorization Act of 1991 was enacted, it is the dynamic requirements that the agency must consider extending to LTV's under section 2503.

Under Standard No. 214's dynamic requirements, a passenger car must provide protection to occupants' thoracic and pelvic regions as indicated by instrumented side impact dummies (SID) in a full-scale crash test in which the car (known as the "target" car) is struck in the side by a moving deformable barrier (MDB) simulating another vehicle. Manufacturers have two compliance options. Under one, the requirements are phased-in by an annually increasing percentage of each manufacturer's production beginning on September 1, 1993, with full implementation effective September 1, 1996. Under the other, no compliance is required during the production year beginning September 1, 1993, but full implementation is required effective September 1, 1994.

The MDB specified in Standard No. 214's test procedure weighs about 3,000 pounds. Under the test procedure, the front and rear wheels of the MBD are "crabbed" at an angle of 27 degrees, and the MDB moves at that angle and at a speed of 33.5 mph into the side of the target car. These aspects of the procedure were selected so that the test simulates the vehicle kinematics and crash forces in the struck car in a real world side crash in which a vehicle traveling at 30 mph perpendicularly strikes the side of a vehicle traveling at 15 mph. The agency determined that the 30 mph/15 mph combination is a representative crash severity for serious chest injury.

Standard No. 214's test procedure includes placing instrumented SID dummies in the outboard front and rear seats of the target car. For the thorax, the performance limit is expressed in terms of an injury criterion known as the Thoracic Trauma Index (dummy) or

TTI(d). This injury criterion represents the average of peak acceleration values measured on the lower spine and the greater of the acceleration values of the upper and lower ribs of the test dummy. For the pelvis, the performance limit is specified in terms of the peak acceleration measured on the pelvis of the test dummy.

While Standard No. 214 specifies the use of SID, NHTSA notes that on December 27, 1991, it published in the **Federal Register** (56 FR 67042) an ANPRM requesting comments on the desirability and need for specifying alternative dummies, including BioSID and EuroSID.

August 1988 ANPRM

On August 19, 1988, NHTSA published in the **Federal Register** (53 FR 31716) an ANPRM concerning possible requirements for LTV's to reduce the risk of fatalities and injuries in side impacts and other crashes where the side protection of the vehicle is a relevant factor. The agency addressed a broad range of subjects in that ANPRM, including thorax and pelvis protection, head injuries, ejection, extension of Standard No. 214's quasi-static side door strength requirements, and side impacts with poles, trees and other similar fixed objects.

In the 1988 ANPRM, NHTSA estimated that there may be 1,350 serious injuries (AIS 3 or greater) annually to LTV occupants resulting from contact between the side interior of the vehicle and the abdomen, chest, pelvis and upper extremities. The agency indicated that approximately 190 of these serious injuries result in fatalities.

NHTSA explained that its research had shown for passenger cars that the use of structural modifications in combination with padding or the use of padding alone can reduce the probability and/or severity of these types of injuries. The agency stated that it believed that the same types of countermeasures may provide benefits for LTV occupants, and that the approach of requiring a vehicle to protect its occupants in a full-scale side impact crash test may be appropriate for LTV's as well as for passenger cars.

The agency also stated that it believed that differences between passenger cars and LTV's and their crash experiences would likely warrant some differences in possible test procedures and/or performance requirements. NHTSA indicated that it appeared to be important for LTV's that the MDB specified in the test be more representative of the striking vehicles that are likely to cause fatalities and injuries in LTV's. The agency noted that crash data indicate that in two-vehicle side impact collisions, more LTV occupants are killed by other LTV's and medium/heavy trucks than by passenger cars, and that a passenger car striking the side structure of a vehicle does not constitute as much of a threat to the occupants of LTV's as it does to occupants of passenger cars.

NHTSA requested information and comments on several issues concerning possible requirements for thorax and pelvis protection, including what relevant data and studies are available, possible countermeasures and their costs and benefits, and what types of performance criteria and test procedures should be considered.

Ford commented that if the agency decides to extend the passenger car dynamic side impact requirements to LTV's, the test procedures (including design and mass of the MDB) should be the same. That company stated that accident data show that light trucks are involved in side impact accidents that are similar to those of passenger cars, and that, therefore, the test and test devices should be the same. Ford also suggested that the agency investigate the field experience resulting from the passenger car requirements.

Chrysler stated that it believes that the structural and padding modifications suggested for thorax and pelvis protection in LTV's would be unlikely to significantly improve motor vehicle safety. That company noted that the agency's analysis indicated that for side impact fatalities in light trucks, the striking vehicle is a passenger car in only 34.6 percent of the cases. Chrysler argued that use of the agency's passenger car test procedure for LTV's would only model about 66 LTV fatal crashes per year, and that the money spent on countermeasures could possibly be spent elsewhere with a higher safety benefit.

Chrysler also stated that it had performed one test on a prototype full-size pickup using the MDB and test dummy for passenger cars. According to that company, the high sill structure absorbed much of the force of the impact, and the truck compiled with the dynamic passenger car requirements. Chrysler stated that this indicates that application of the passenger car test procedure to at least some LTV's is unlikely to prompt substantive countermeasures.

General Motors stated that there is considerable uncertainty regarding the type of MDB that should be used if rulemaking were ultimately to require full-scale testing of LTV's. That company also suggested that the agency consider component testing or composite testing as an alternative for full-scale test requirements.

Range Rover expressed concern about the possibility that the MDB weight for LTV testing might be higher than that used for passenger car testing. That company stated that the barrier weight is the same for passenger cars and LTV's in other safety standards and that it would be unreasonable to specify a weight that far exceeds the actual weight of the majority of the vehicles on the road. Range Rover also stated that using a heavier barrier for LTV's would mean that LTV's would have to meet a more stringent requirement than passenger cars.

Volkswagen suggested that a composite test procedure might be appropriate for LTV's, although it questioned the need for any additional side impact countermeasures for these vehicles. Volkswagen stated that LTV's generally have high sills which offer a substantial degree of occupant protection in side impacts. Toyota commented that it was premature to consider dynamic requirements for LTV's until the agency had completed its rulemaking concerning dynamic side impact requirements for passenger cars.

The National Truck Equipment Association and the Recreation Vehicle Industry Association expressed concern about the impacts of dynamic crash test requirements on final stage manufacturers and alterers of certified motor vehicles.

The Insurance Institute for Highway Safety (IIHS) commentd that the need to apply side impact standards for LTV's is becoming increasingly important and is long overdue. That organization urged the agency to embark on a crash test program to establish whether the passenger car dynamic side impact test represents a severe enough test for light trucks. IIHS stated that because the light truck door sill height matches better with the passenger car bumper, the passenger car test may not be as severe for light trucks as it is for passenger cars. That organization stated that NHTSA may need to increase the weight and adjust the bumper height of the test barrier so that it is more representative of light trucks.

New ANPRM

A great deal of activity has occurred in the area of side impact protection during the almost four years since NHTSA issued its August 1988 ANPRM. As indicated above, in October 1990, the agency issued its final rule establishing the dynamic side impact requirements for passenger cars. While the phase-in

of the new requirements does not begin until next year, manufacturers are already designing many of their passenger cars to meet the requirements. Several manufacturers have advertised that certain models already comply with them. Therefore, manufacturers and others now have considerably more experience with the dynamic test procedure and issues related to it.

Also during the past four years, NHTSA extended Standard No. 214's quasi-static side door strength requirements to LTV's. Finally, the agency and others have continued research in the area of side impact protection. As discussed below, NHTSA has conducted two series of LTV side impact tests similar to Standard No. 214's dynamic side impact test for passenger cars.

Given the events which have occurred since the agency published its August 1988 ANPRM, publication of today's ANPRM is necessary, in addition to meeting a requirement of the NHTSA Authorization Act of 1991, to help ensure that NHTSA has up-to-date information on which to base a decision of whether, and if so how, to proceed with further rulemaking in this area.

As discussed in the Preliminary Regulatory Impact Analysis (PRIA) for this ANPRM, NHTSA estimates that the number of LTV fatalities in side impact crashes will rise by about 11 percent between 1989 and the mid-1990's. It is expected that front seat fatalities will total 1,683 to 1,753, with 58 fatalities in the second seat. Approximately 16 percent of the fatalities are expected to occur in heavy vehicle-LTV side crashes, 39 percent in light vehicle-LTV side crashes, and 45 percent in single vehicle LTV side crashes. In multi-vehicle side impacts, approximately 29 percent of the LTV fatalities are caused by heavy vehicles. A much smaller percentage of passenger car fatalities is caused by heavy vehicles in multi-vehicle side impacts.

The possible extension of Standard No. 214's dynamic requirements to LTV's would primarily address LTV occupant fatalities and serious injuries which result from contacts between the side interior of LTV's and the shoulder, chest, abdomen, back and pelvis. NHTSA estimates that by the mid-1990's, this portion of the side impact problem will account for about 245 LTV occupant fatalities and an additional 825 non-fatal serious injuries (AIS–3 or greater) annually.

NHTSA continues to believe that the same types of countermeasures that reduce the probability of these types of thoracic and pelvic injuries in passenger cars, i.e., the use of structural modifications in combination with padding or the use of padding alone, can provide safety benefits for LTV's. The agency also believes that the approach used in Standard No. 214 for passenger cars of requiring a vehicle to protect its occupants in full-scale side impact crash test, utilizing an MDB and instrumented test dummies, may be appropriate for LTV's.

In considering the possible extension of Standard No. 214's dynamic side impact requirements to LTV's, NHTSA believes that one important issue is whether, given the differences between passenger cars and LTV's and their crash experiences, any changes should be made in the Standard No. 214 test procedure to make it more appropriate for LTV's.

As noted above, NHTSA has conducted two series of LTV side impact tests similar to the Standard No. 214 passenger car test. In the first test series, the agency tested six LTV's using an MDB that was modified to make it more representative of crash conditions causing fatalities and serious injuries in light trucks. The weight of the MDB was increased to 4,000 pounds, and the height of the barrier face was raised about 7.5 inches. In the second test series, NHTSA tested three small LTV's and a fourth vehicle representative of a small LTV, using the test procedure, including the 3,000 pound MDB, specified in Standard No. 214 for passenger cars. (The fourth vehicle was a passenger car version of a vehicle which is marketed in a four-wheel drive version as an LTV. The agency believes that both versions of the vehicle provide similar side impact protection.) The results of the two series of tests are set forth in the PRIA.

The data from the two test series indicate that many current LTV's, especially medium and heavy ones, already meet the injury criteria specified for future passenger cars. For some LTV's, this is true even when the modified, heavier MDB is used. Other LTV's, however, had high TTI(d) and pelvic g levels in the tests, indicating that their occupants would have a higher risk of serious occupant injury in the types of real-world crashes replicated by the tests.

Based on the limited number of LTV side impact crash tests conducted to date, NHTSA believes that, for those LTV's that would not already comply with Standard No. 214's passenger car requirements, the use by manufacturers of countermeasures which employ padding alone would probably be sufficient to ensure compliance. This would also likely be true for possible alternative requirements that might be proposed, such as ones specifying use of a heavier MDB.

In its passenger car rulemaking, NHTSA estimated that the effectiveness of countermeasures which employ padding is about 20 percent. The agency is citing this effectiveness level as an example. Further evaluation would be needed to provide an effectiveness estimate for LTV's. In order to provide estimates of benefits, NHTSA would also need to estimate the percentage of the LTV fleet that currently complies with specific proposed requirements.

NHTSA estimated the costs of padding countermeasures for passenger cars to be $52–63 per vehicle (1989$). These consumer costs included front and rear passenger protection, two- and four-door models, secondary weight and fuel costs.The agency estimated that passenger car countermeasures would add approximately 20 pounds of weight per vehicle, including secondary weight. Accounting for the actual crash test performance of passenger cars in the current fleet, a secondary weight penalty and a fuel penalty, NHTSA estimated a sales weighted consumer cost per vehicle of $51 for the passenger car requirements. The agency is citing these passenger car cost estimates as an example. Further evaluation would be required to make LTV cost estimates.

In analyzing issues related to the possible extension of Standard No. 214's dynamic side impact requirements to LTV's, NHTSA requests information and comments on the following questions:

1. What current crash data and crash analyses are available to indicate injuries to the thorax and pelvis of LTV occupants in vehicle-to-vehicle side crashes?

2. What tests/studies have been performed concerning the lateral stiffness and crash performance of production LTV's in mitigating thorax/pelvis injuries in side impacts?

3. Should the side impact dynamic test requirements for passenger cars be extended to all LTV's with a GVWR of 10,000 pounds or less; to MPV's and trucks with a GVWR of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less (the LTV's cited in the NHTSA Authorization Act of 1991); to some other group of LTV's, such as mini-vans (the LTV's that are most like passenger cars); or not to any LTV's?

4. Should the weight and height of contact surface of the MDB for side impact testing of passenger cars be modified to be more representative of vehicles that cause injuries and fatalities in LTV's? If so, what modifications should be made?

5. Is the MDB impact speed/crab angle combination (33.5 mph/27 degrees, simulating a crash in which a vehicle traveling at 30 mph perpendicularly strikes the side of a vehicle traveling at 15 mph), specified for passenger car testing, appropriate for LTV testing? Is the 30 mph/15 mph combination a representative crash severity for serious chest injury in LTV's (as it is for passenger cars)?

6. Is the MDB impact point specified for passenger cars appropriate for LTV's?

7. Should the 90-degree impact angle be changed to minimize the lateral stiffness effects of the bench seats in LTV tests? If so, by how much and why?

8. Should NHTSA develop a test procedure for LTV's in which MDB height and weight varies depending upon a vehicle's sill/H-point or seating reference point heights and curb weight? If so, what specific procedures should the agency consider?

9. Is the basic approach of NHTSA's side impact dynamic test requirements for passenger cars, i.e., requiring vehicles to meet specified TTI(d) and pelvic g limits in a full-scale crash test, appropriate for LTV's? Are there any alternative approaches that should be considered?

10. Are the available countermeasures for reducing thorax and pelvis injuries in passenger car side impacts, i.e., the use of structural modifications in combination with padding or the use of padding alone, applicable to LTV side impacts? Please provide estimates of costs, benefits and leadtimes associated with adopting these countermeasures for LTV's. To what extend do the available countermeasures, costs, benefits and leadtimes vary for different types of LTV's?

11. Should different performance requirements be established for different types of LTV's, e.g., based on size of LTV, number of doors, etc.? If there are no seats close to the side of an LTV, should that side be excluded from the requirements? Should any particular types of LTV's, such as walk-in vans, tow trucks, and vehicles without permanent side doors, be excluded from the requirements?

12. What impacts would result on final stage manufacturers and alterers from extending the side impact dynamic test requirements for passenger cars to LTV's?

Rulemaking Analyses and Notices

DOT Regulatory Policies and Procedures

NHTSA has considered the potential burdens and benefits associated with extending the side impact dynamic test requirements for passenger cars to LTV's. NHTSA believes that this advance notice is a "significant" rulemaking action under the Department of Transportation's regulatory policies and procedures, since it concerns a matter in which there is substantial public interest. The agency has prepared a PRIA which addresses the issues of costs and benefits of the potential countermeasures that the agency is considering in this action. The PRIA is being placed in the docket.

Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria in Executive Order 12612, and it has been determined that it does no have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Comments

NHTSA solicits public comments on the questions presented in this ANPRM and on other relevant issues. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality. Three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the advance proposal will be considered. To the extent possible, comments filed after the closing date will also be considered. Comments on the advance proposal will be available for inspection in the docket. After the closing date, NHTSA will continue to file relevant information in the docket as this information becomes available, and recommends that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

Authority: 15 U.S.C. 1392, 1401, 1407; delegations of authority at 49 CFR 1.50 and 501.8.]

Issued on: June 1, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92-13168 Filed 6-2-92; 11:11 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 625

Mid-Atlantic Fishery Management Council; Public Hearing on Summer Flounder Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearing; request for comments.

SUMMARY: The Mid-Atlantic Fishery Management Council will hold a public hearing on the resubmitted portion of Amendment 2 to the Summer Flounder Fishery Management Plan (FMP). The purpose of the hearing is to obtain public comments on management provisions that will be resubmitted to NMFS to replace provisions disapproved by the Regional Director.

DATES: Written comments on the proposed revisions must be submitted by noon, June 22, 1992, to John C. Bryson, room 2115 Federal Building, 300 South New Street, Dover, DE 19901-6790, phone (302) 674-2331, fax (302) 674-5399.

A public hearing on the above revisions will be held at 7 p.m., June 24, 1992.

ADDRESSES: The hearing will be held at the Radisson/Philadelphia Airport, 500 Stevens Drive, Philadelphia, PA 19113, phone (215) 521–5900.

FOR FURTHER INFORMATION CONTACT: John C. Bryson, room 2115, Federal Building, 300 South New Street, Dover, DE 19901–6790, phone (302) 674–2331, fax (302) 674–5399.

SUPPLEMENTARY INFORMATION: The following portion of 9.1.2.3.1 of Amendment 2 to the FMP was disapproved:

Until the Regional Director determines that a State is in compliance with the FMP, vessels from that State may be prohibited from fishing in the EEZ. The Regional Director shall publish a notice in the **Federal Register** specifying which States are in compliance, which States are not in compliance, and which States are closed. A vessel is deemed to be from the State listed on the permit as the principal landing State as shown on the vessel's permit application. The State from which the vessel is deemed to be from may not be changed except through a notification to the Regional Director of a change to the permit application. Such notification shall include evidence sufficient for the Regional Director to conclude that the legal residence of the owner or operator has been changed. Such evidence may include a copy of a drivers license or a voter registration card.

The Regional Director shall close the EEZ to fishing for summer flounder by commercial vessels from a particular State by publishing a notice in the **Federal Register** if he determines that the State's quota has been exceeded and the State has taken no action or inappropriate action to close it fishery.

This portion was judged to violate national standard 4.

Pursuant to section 304(b) of the Magnuson Fishery Conservation and Management Act, the Director, Northeast Regional Office, NMFS, recommended that the issue be resolved by adding a provision that the Federal permits required by the FMP be conditioned with the restriction that the vessel may not land summer flounder in a State whose quota (established under the FMP) has been reached. This condition would apply equally and without prejudice to all permitted vessels, regardless of their home port States, and would not depend on any State action or inaction.

To implement this revision, the second paragraph of section 9.1.2.1.1.3. (Permit application) would be revised by adding a second sentence, so the paragraph would read:

Applicants for a permit under this FMP must agree, as a condition of issuance of the permit, to fish in accordance with Federal rules whether they are fishing in the EEZ or State waters. For vessels with moratorium permits, this includes agreeing not to land summer flounder in any State where the Regional Director has determined that the State's commercial quota has been landed.

Additionally, section 9.1.2.5. (Other measures) would be revised by adding a paragraph to read:

Owners or operators of vessels with moratorium permits may not land summer flounder in a State when the Regional Director has determined that the State's commercial quota has been landed.

To be consistent with these revisions, § 625.4 (Vessel permits) and § 625.8 (Prohibitions) of the implementing regulations in title 50 CFR would be amended later through proposed rulemaking with a public comment period, followed by publication of a final rule. These revisions do not change the environmental, economic, or regulatory impacts of Amendment 2, so the Environmental Impact Statement and Regulatory Impact Review are not being revised.

Dated: June 1, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–13126 Filed 6–4–92; 8:45 am]

BILLING CODE 3510–22–M

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50 CFR Part 651

[Docket No. 920495–2095]

Northeast Multispecies Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NOAA proposes to amend the regulations implementing the Fishery Management Plan for the Northeast Multispecies Fishery (FMP) by modifying the language of 50 CFR 651.20(e)(2), which allows the use of the net strengtheners in the Regulated Mesh Area. This modification is necessary to address the use of net strengtheners as a means of circumventing the intent of the regulations.

DATES: Comments on the proposed rule must be received on or before July 6, 1992.

ADDRESSES: Comments may be mailed to Richard B. Roe, Regional Director, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Groundfish Regulations".

Copies of the Regulatory Impact Review (RIR) and Environmental Impact Statement (EIS) for the FMP may be obtained from Douglas Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway, Saugus, MA 01908.

FOR FURTHER INFORMATION CONTACT: Jack Terrill (Resource Policy Analyst, Northeast Region, NMFS), 508–281–9252.

SUPPLEMENTARY INFORMATION: The regulations implementing the FMP specify gear requirements such as a minimum mesh size in an area designated as the Regulated Mesh Area. The regulations at 50 CFR 651.20(e)(2) allow for the use of a strengthener on a net subject to mesh regulations in the Regulated Mesh Area. The net strengthener employed may be attached to the top half of the net by its outer edges, provided that it is of the same material as the regulated portion of the net and at least twice the authorized minimum mesh size. The top half is determined by laying the net flat. The intent of the regulation was to allow the legitimate use of a portion of a net over the regulated net that would provide added strength but not impede escapement of fish through the regulated mesh. Added strength could be necessary if a net is full of fish and under strain.

Several fishermen have interpreted the regulation differently from its intent. They have employed a net strengthener that if laid flat on top of the regulated net would actually have a smaller width than the regulated net. The application of this type of net strengthener constricts the full opening of the net, which results in a smaller effective mesh size despite the use of legal size mesh. Recent reports have indicated that a net equipped in this manner will catch fish below the legal minimum size, with up to 85 percent discards of Atlantic cod occurring. The increased mortality resulting from this practice is not consistent with the original intent of the regulation.

In order to eliminate this practice, the New England Fishery Management Council (Council) requested NMFS to modify the existing regulation by allowing only one splitting strap and one bull rope to be present on the top of the regulated portion of a trawl net. These may be no more than 3 inches in diameter and can not constrict in any manner the top of the regulated portion of the net. No other device or material may be used on the top of the regulated portion of the net.

Such a configuration should not affect the behavior of the net nor should it result in any increase in cost. It would

effectively eliminate the current practice, and make it consistent with the intent of the original requirement.

Comments are requested on this proposed rule and will be accepted until July 6, 1992. Specific comments are requested on the adequacy of the allowance of one bull rope. At a meeting of the Council's Groundfish Industry Advisory Panel it was suggested that one bull rope was not sufficient now that the regulated portion of th net is the entire net. Comments received on this aspect of the proposed rule will be considered and any change will be specified in the final rule for this amendment.

Classification

The Regional Director has initially determined that this proposed rule is necessary for the conservation and management of the Northeast multispecies fishery and is consistent with the Magnuson Act and with other applicable law.

The Regional Director has determined that this rule is consistent with the FMP.

The Assistant Administrator for Fisheries, NOAA, has determined that this proposed rule, which would revise the language in the regulations implementing the FMP, does not alter the scope or intent of the FMP, the conclusions derived from the regulatory impact review (RIR), EIS, or Regulatory Flexibility Analysis for the FMP, or its implementing regulations. Therefore, this proposed rule is consistent with Executive Order 12291 and the Regulatory Flexibility Act. The General Counsel of the Department of Commerce certified to the Small Business Administration that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities since the proposed rule would only modify the regulations to achieve its original intent, and eliminate interpretations which circumvent the purpose of the regulation.

This action is categorically excluded from the requirement to prepare an environmental assessment by NOAA Administrative Order 216–6. The EIS prepared for the FMP assessed the impacts of the regulated mesh requirement. The net strengthener provision in this regulatory amendment further defines how the regulated mesh requirement is implemented. This modification intends to achieve the effects associated with the regulated mesh requirement.

This rule does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act.

The Regional Director has determined that this rule would be implemented in a manner that is consistent, to the maximum extent practicable, with the approved coastal zone management programs of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, and Virginia. The basis of this determination is that this proposed rule reflects the intent of the final rule that originally implemented the minimum mesh size requirement for the groundfish fishery. Therefore, it is not necessary to submit this rulemaking for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 651

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: June 1, 1992.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 651 is proposed to be amended as follows:

PART 651—NORTHEAST MULTISPECIES FISHERY

1. The authority citation for part 651 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 651.20, paragraph (e)(2) is revised to read as follows:

§ 651.20 Regulated mesh area and gear limitations.

(e) * * *

(2) A fishing vessel shall not use any device or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of the regulated portion of a trawl net, except that one splitting strap and one bull rope (if present), consisting of line and rope no more than 3 inches (7.62 cm) in diameter, may be used if such splitting strap and/or bull rope does not constrict in any manner the top of the regulated portion of a trawl net. "Top of the regulated portion of the net" means the 50 percent of the entire regulated portion of the net (that in a hypothetical situation) would not be in contact with the ocean bottom during a tow if the regulated portion of the net were laid flat on the ocean floor. For the purpose of this subparagraph, head ropes shall not be considered part of the top of the regulated portion of a trawl net.

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[FR Doc. 92–13201 Filed 6–4–92; 8:45 am]

BILLING CODE 3510–22–M

50 CFR Part 675

Petition for Rulemaking; Central Bering Sea Fisherman's Association

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Decision on petition for rulemaking; denial.

SUMMARY: NMFS announces its decision not to undertake at this time the rulemaking requested by a petition submitted by the Central Bering Sea Fishermen's Association (CBSFA). On April 3, 1992, NMFS received a request from CBSFA to stay proceedings and decisionmaking on CBSFA's Petition for rulemaking without prejudice to a resumption of such proceedings on further notice by CBSFA. Based on NOAA guidelines and given CBSFA's request, NMFS has decided not to undertake the rulemaking suggested by CBSFA. This decision is based on procedural grounds and does not address the substantive merits of CBSFA's petition.

FOR FURTHER INFORMATION CONTACT: Catherine Belli, Fishery Management Specialist, (301) 713–2341, or Lauren Rogerson, Attorney-Advisor, (301) 713–2231.

SUPPLEMENTARY INFORMATION: CBSFA petitioned NMFS to: (1) Issue a rule to provide a directed allocation of the Bering Sea and Aleutian Islands Total Allowable Catch to the Pribilof communities, (2) issue an interpretative rule indicating NMFS has a fiduciary obligation to assist in the Federal creation of a fishery-based economy on the Pribilof Islands and, (3) issue a finding that the Community Development Quota (CDQ) system will not encourage serious investment in fishery related enterprises on the Pribilof Islands. As stated in its petition, CBSFA represents the vested interest of Aleut Natives of the Prifilof Islands, Alaska, in the creation of a fisheries-based economy on the Pribilof Islands.

The notice of receipt of petition for rulemaking and request for comments was published in the **Federal Register** on January 21, 1992 (57 FR 2247). The public comment period ended March 6, 1992. Twelve comments in support of the petition were received during the comment period.

The CBSFA requested publication of, and action on, its petition concurrent with public notice and review of Amendment 18 to the FMP. Amendment 18 to the FMP was prepared by the North Pacific Fishery Management Council (Council) and was submitted to the Secretary for review under the provisions of the Magnuson Act. As proposed, Amendment 18 contained a provision to establish a Western Alaska Community Development Quota (CDQ) program and set aside 7.5 percent of the Bering Sea and Aleutian Islands pollock quota for western Alaska communities. On March 4, 1992, the Under Secretary for Oceans and Atmosphere approved in concept the CDQ provisions of Amendment 18. Criteria for community eligibility will be established by the Governor of Alaska, in consultation with the Council, and submitted to the Secretary of Commerce for approval through rulemaking.

On April 3, 1992, CBSFA submitted a request for a stay of proceedings to the Assistant Administrator. CBSFA stated that the purpose of the request was to preserve NOAA's freedom to judge the merits and legal sufficiency of certain forthcoming actions of the Council concerning the eligibility criteria for the CDQ program at upcoming Council meetings. In its request, CBSFA stated the belief that the Council may redefine the CDQ and the inshore allocations such that the objectives of its petition can be met through the council process. CBSFA requested a stay of proceeding so that, if its objectives are not realized through the council process, it may resume the petition.

NMFS considered CBSFA's petition and its request for a stay of proceedings and has decided not to initiate the rulemaking suggested by CBSFA for two reasons. First, NOAA guidelines provide for acceptance or rejection of a petition for rulemaking by the 120th day after receipt of its petition for rulemaking. There is no provision for postponing a decision based on a request for a stay by a petitioner. Second, NMFS encourages interested groups to work through the Council process to affect changes in fishery management. CBSFA stated in the request for a stay of proceedings its renewed interest in working with the Council in its review of CDQ criteria. For these reasons, NMFS has determined that there is no benefit to be derived by extending the review period by postponing a decision indefinitely. NMFS' decision not to initiate rulemaking at this time is based on procedural grounds and is not based on the merits of the petition. Because NMFS' decision not to initiate rulemaking is based on procedural grounds, NMFS did not consider comments submitted by the public; therefore, the comments are not discussed in detail in this notice. Copies of the comments are available upon request for public inspection.

Under the Administrative Procedure Act, CBSFA may resubmit the petition. All petitions for rulemaking received by NMFS will be processed in accordance with NOAA guidelines and published in the **Federal Register** for review and public comment.

Dated: June 1, 1992.

William W. Fox, Jr.,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 92-13203 Filed 6-4-92; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 57, No. 109
Friday, June 5, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Adjudication Notice of Public Meetings

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a series of meetings of the Committee on Adjudication of the Administrative Conference of the United States.

The Committee will discuss a draft report on the federal administrative judiciary, prepared for the Conference by Paul Verkuil, Daniel Gifford, Charles Koch, Richard Pierce, and Jeffrey Lubbers.

Copies of the draft report are available from the Conference.

DATES: Monday, June 29, 1992 at 1:30 p.m., Wednesday, July 15, 1992 at 1:30 p.m., Tuesday, August 4, 1992 at 1:30 p.m., Tuesday, August 18, 1992 at 1:30 p.m.

LOCATION: Library of the Administrative Conference, 2120 L Street NW., suite 500, Washington, DC.

PUBLIC PARTICIPATION: The committee meetings are open to the interested public, but limited to the space available. Persons wishing to attend should notify the contact person at least two days prior to each meeting. The committee chairman may permit members of the public to present oral statement at the meetings. Any member of the public may file a written statement with the committee before, during, or after the meetings. Minutes of the meetings will be available on request.

FOR FURTHER INFORMATION CONTACT: Nancy G. Miller, Office of the Chairman, Administrative Conference of the United States, 2120 L Street NW., suite 500, Washington, DC 20037. Telephone: (202) 254–7020.

Dated: June 1, 1992.
Jeffrey S. Lubbers,
Research Director.
[FR Doc. 92–13248 Filed 6–4–92; 8:45 am]
BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

Bedrock Creek Watershed Protection Project; Clearwater and Nez Perce Counties

AGENCY: Soil Conservation Service, Department of Agriculture.

ACTION: Notice of a finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Paul H. Calverley, State Conservationist, Soil Conservation Service, 3244 Elder Street, room 124, Boise, Idaho, 83705, telephone (208) 334–1601.

NOTICE: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Bedrock Creek Watershed Protection Project, Clearwater and Nez Perce Counties, Idaho.

The Environmental Assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Paul H. Calverley, State Conservationist, has determined that the preparation and review of an environmental impact statement was not needed for this project.

The Bedrock Creek Watershed Protection Project consists of a system of land treatment measure designed to protect the resource base, reduce off-site sediment, and improve the quality of waters entering the Clearwater River. Planned land treatment practices include pasture and hayland planting, critical area planting, grassed waterways, terraces, and sediment basins.

The notice of a finding of no significant impact (FONSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Paul H. Calverley. The FONSI has been sent to various Federal, State, and local agencies, and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the address stated on the previous page.

No administrative action on the proposal will be initiated until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10904—Watershed Protection and Flood Prevention Program, and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and Local Officials)

Dated: May 26, 1992.

[FR Doc. 92–13179 Filed 6–4–92; 8:45 am]
BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.
Title: Annual Retail Trade Survey.
Form Number(s): B–151, B–151A, B–151D, B–152, B–153, B–153D.
Agency Approval Number: 0607–0013.
Type of Request: Extension of a currently approved collection without any change in the substance or in the method of collection.
Burden: 9,415 hours.
Number of Respondents: 22,458.
Avg Hours Per Request: 25 minutes.
Needs and Uses: The Bureau of the Census conducts the Annual Retail Trade Survey to collect annual totals of sales, inventories, inventory valuation methods, purchases, and accounts receivable balances from a sample of retail establishments in the United States. The estimates compiled from this survey are critical to the accurate measurement of total economic activity and are used in computing such indicators of economic well-being as the Gross Domestic Product and the

National Income and Product Account. Survey results also provide valuable information for economic policy decisions and actions by the government and are widely used by private businesses, trade organizations, professional associations, and other for market research and anaylsis.

Affected Public: Businesses or other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 2, 1992.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 92–13234 Filed 6–4–92; 8:45 am]

BILLING CODE 3510–07–F

Foreign-Trade Zones Board

[Docket 15–92]

Proposed Foreign-Trade Zone—Rio Rancho, NM; Application Filed

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Rio Rancho, New Mexico, requesting authority to establish a general-purpose foreign-trade zone in Rio Rancho, New Mexico, adjacent to the Albuquerque Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 22, 1992. The applicant is authorized to make the proposal under section 3–18–29, New Mexico Statutes Annotated 1978 (1985 Repl.).

The proposed zone would be in the second project in the Albuquerque area. The Board authorized the City of Albuquerque, New Mexico, to establish a general-purpose zone and subzone in 1984 (FTZ 110, Board Order 279, 49 FR 44516).

The proposed Rio Rancho foreign-trade zone would be located at the Rio Rancho Industrial Park, which consists of 5 parcels (567 acres). Four of the parcels are located in the City of Rio Rancho (three are on New Mexico State Highway 528 and one on Southern Boulevard). The fifth parcel is located in Sandoval County, immediately adjacent to the City of Rio Rancho, on Highway 528. Amrep Southwest Inc. (Amrep), is the primary developer and owner of the industrial park, although certain parcels have been sold to individual firms which remain subject to the covenants of the park. Amrep has been designated as the proposed zone operator.

The application indicates there is a need for additional zone services in the Albuquerque area to serve the economic development needs of the City of Rio Rancho. Several firms have indicated an interest in using zone procedures for warehousing/distribution of such items as integrated circuits, die cutting tooling, electronic aviation communication products, optical and medical products, and electronic components and accessories. Specific manufacturing approvals are not being sought at this time. Requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), a member of the FTZ Staff has been designated examiner to investigate the appolication and report to the Board.

Public comment on the application is invited from interested parties. Submissions (orginal and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is August 4, 1992. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to August 19, 1992).

While no public hearing has been scheduled for the FTZ Board, consideration will be given to such a hearing during the review.

A copy of the application and accompanying exhibits will be available during this time for public inspection at the following location:

U.S. Department of Commerce District Office, 625 Silver Street, SW., 3d Floor, Albuquerque, NM 87102.

Office of the Executive Secretary, Foreign-Trade Zones Board, room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: May 29, 1992.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 92–13235 Filed 6–4–92; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

[A–588–015]

Television Receivers, Monochrome and Color, From Japan; Termination of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of termination of antidumping duty administrative review.

SUMMARY: On April 13, 1992 (57 FR 12797), the Department of Commerce initiated an administrative review of the antidumping duty finding on television receivers, monochrome and color, from Japan for the period March 1, 1991, through February 29, 1992, for television receivers manufactured by Citizen Watch Co., Ltd. The Department has now decided to terminate this review.

EFFECTIVE DATE: June 5, 1992.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 377–5255.

SUPPLEMENTARY INFORMATION:

Background

On March 30, 1992, we received a request from Citizen Watch Co., Ltd. (Citizen), a Japanese manufacturer of television receivers, to conduct an administrative review of the antidumping duty finding on telephone receivers, monochrome and color, from Japan for the period March 1, 1991, through February 29, 1992. On April 13, 1992, we published a notice initiating that administrative review (57 FR 12797).

On May 15, 1992, Citizen withdrew its request for review. Therefore, we are terminating the review of the television receivers, monochrome and color, from Japan for the period of March 1, 1991, through February 29, 1992.

This termination of review and notice are in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)(1) and 19 CFR 353.22(a)(5).

Dated: May 29, 1992.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 92–13236 Filed 6–4–92; 8:45 am]

BILLING CODE 3510–DS–M

[C-570-816]

Final Negative Countervailing Duty Determinations: Oscillating and Ceiling Fans From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: June 5, 1992.

FOR FURTHER INFORMATION CONTACT: Ross Cotjanle or Beth Graham, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, room B-099, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-3534 or 377-4105, respectively.

FINAL DETERMINATION:

Case History

Since the publication of the notice of preliminary determination in the **Federal Register** (56 FR 10111, March 23, 1992), the following events have occurred.

We conducted verification in the PRC and Hong Kong of certain respondents from April 6 to April 17, 1992.

On April 30, 1992, Lasko Metal Products, Inc. (Lasko), petitioner, alleged that PRC fan producers benefit from upstream subsidies provided to steel-input suppliers. On May 11, 1992, the Government of the People's Republic of China (GPRC), the China Chamber of Commerce for Machinery and Electronic Products (including China Household Electric Appliance Branch), and the China Association of Enterprises with Foreign Investment, disputed petitioner's allegations as untimely under 19 CFR 355.15(d). On May 15, 1992, we dismissed petitioner's upstream allegation on the following bases: (1) Petitioner did not provide evidence to support reversal of the Department's preliminary determination that the "downstream" industries, *i.e.*, producers of oscillating and ceiling fans, are not market-oriented, (2) petitioner provided no information that would cause the Department to reconsider its conclusion in Initiation of Countervailing Duty Investigation: Chrome-Plated Lug Nuts and Wheel Locks from the People's Republic of China, (57 FR 877, January 9, 1992) that significant state control of the PRC steel sector, the allegedly subsidized input suppliers, rendered "subsidies" to such suppliers incapable of being identified or fairly quantified, and (3) petitioner provided insufficient information identifying a benefit to the input product, the existence of a competitive benefit, and establishing that the subsidies had a significant effect on the cost of producing the subject merchandise.

A hearing was held on May 22, 1992.

Scope of Investigation

Imports covered by these investigations constitute two separate classes or kinds of merchandise: (1) Oscillating fans; and (2) ceiling fans.

The products subject to these investigations are oscillating fans and ceiling fans. Oscillating fans are electric fans that direct a flow of air using a fan blade/motor unit that pivots back and forth on a stationary base ("oscillates"). Oscillating fans incorporate a self contained electric motor of an output not exceeding 125 watts. Ceiling fans are electric fans that direct a downward and/or upward flow of air using a fan blade/motor unit. Ceiling fans incorporate a self-contained electric motor of an output not exceeding 125 watts. Ceiling fans are designed for permanent or semi-permanent installation.

Window fans, industrial oscillating fans, industrial ceiling fans, and commercial ventilator fans are not included within the scope of these investigations. Futhermore, industrial ceiling fans are defined as ceiling fans that meet six or more of the following criteria in any combination: A maximum speed of greater than 280 revolutions per minute (RPMs); a minimum air delivery capacity of 8000 cubic feet per minute (CFM); no reversible motor switch; controlled by wall-moutned electronic switch; no built-in motor controls; no decorative features; not light adaptable; fan blades greater than 52 inches in diameter; metal fan blades; downrod mounting only-no hugger mounting capability; three fan blades; fan blades mounted on top of motor housing; single-speed motor.

The Harmonized Tariff Schedule (HTS) subheading under which oscillating fans are classifiable is 8414.51.0090. The HTS subheading under which ceiling fans are classifiable is 8414.51.0030. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

The Market Orientation of the PRC Fans Industry

As explained in our preliminary determinations, the countervailing duty (CVD) law may be applied to industries in nonmarket economy (NME) countries if the Department finds that the relevant industry is a market-oriented industry (MOI). To determine whether a sector of an NME is market-oriented, the Department applies the following three-part test:

- For merchandise under investigation, there must be virtually no government involvement in setting prices or amounts to be produced. For example, state-required production or allocation of production of the merchandise, whether for export or domestic consumption in the NME country, would be an almost insuperable barrier to finding a market-oriented industry.
- The industry producing the merchandise under investigation should be characterized by private or collective ownership. There may be state-owned enterprises in the industry, but substantial state ownership would weigh heavily against finding a market-oriented industry.
- Market-determined prices must be paid for all significant inputs, whether material or non-material (*e.g.*, labor and overhead), and for an all-but-insignificant proportion of all the inputs accounting for the total value of the merchandise under investigation. For example, an input price will not be considered market-determined if the producers of the merchandise under investigation pay a state-set price for the iniput or if the input is supplied to the producers at government direction. Moreover, if there is any state-required production in the industry producing the input, the share of state-required production must be insignificant.

See Preliminary Negative Countervailing Duty Determination: Oscillating and Ceiling Fans from the People's Republic of China (56 FR 10011, March 23, 1992). If all of these conditions are not met, the producers of the merchandise under investigation will be treated as NME producers and the CVD law will not apply.

Based on our verification of the responses submitted in this proceeding, we determine that the fans industry in the PRC does not meet the third of these criteria. Verification confirmed that most of the companies under investigation source significant inputs in the PRC. We also established that some of the products included within the PRC's mandatory plan are used as inputs for fans and that for certain inputs, in-plan production was a significant proportion of all PRC production of those inputs. Verification also established that certain PRC fan input suppliers have both in-plan and out-of-plan production. Finally, we learned at verification that some of the state- and collectively-owned enterprises producing fans purchase inputs at state-mandated prices. Although the in-plan purchases were for inputs used in the production of

products other than the fans under investigation, the materials were the same as those used for fan production. These companies had no inventory control system which distinguished between materials purchased in-plan and out-of-plan.

Because we have determined that there is extensive government involvement in certain industries supplying significant inputs to the PRC fans producers, there is no need to address the first two parts of the MOI test. However, if the first two parts of the MOI test were to be addressed, the Department has concerns regarding the extent of the influence which GPRC guidance plans issued to collectives and state-owned enterprises have on their production and marketing decisions. For example, local governmentas set certain production targets. These production targets establish either total production quantities or values. Verification established that guidance plans also are used by local authorities as a means to measure company management's performance, again suggesting business enterprises' lack of automony from the government concerning prices and production.

Based on the information above, we conclude that the prices of several significant inputs are not market-determined. Therefore, we have determined that the PRC fans industry is not an MOI. As a result, we determine that the CVD law cannot be applied to the PRC fan industry. Therefore, the Department is issuing final negative determinations in these proceedings.

Interested Party Comments

Comment 1: The respondents and a U.S. importer, Encon, argue that the CVD law cannot be applied to an NME country like China. They claim that the Court of Appeals held in *Georgetown Steel Corp.* v. *United States*, 801 F.2d 1309 (Fed. Cir. 1986) (Georgetown Steel) that once a country is determined to be an NME country, application of the CVD law is precluded as a matter of law. Respondents claim that according to the court in Georgetown Steel, the antidumping (AD) law provides the exclusive remedy against unfairly priced imports from NME countries. Therefore, unless the Department revokes the PRC's status as an NME country under the AD law, the Department is required to find that the CVD law does not apply to the PRC and to terminate this investigation.

Respondents further state that Georgetown Steel and the Department's practice of not applying the CVD law to NMEs was affirmed by the Congress' rejection of Section 157 of House Resolution 3 as an amendment to the 1988 Trade Act. These parties state that not only would the amendment have overruled the Georgetown Steel decision but also would have permitted the Department to conduct the "sectoral" analysis involved in this investigation.

Lasko rebuts respondents by arguing that in Georgetown Steel, the Federal Circuit held that 19 U.S.C. 1303 does not apply to countries where the state controls virtually every aspect of the economy. Lasko further asserts that China is no longer the monolithic, state-controlled economy described in Georgetown Steel. To support this claim, petitioner cites the Economic Report of the President (February 1991) which describes extensive economic reform in China and to Department notices which refer to China as an economy "in transition" (Final Determination of Sales at Less than Fair Value: Chrome-Plated Lug Nuts from the People's Republic of China (56 FR 46153, 46155, September 10, 1991), remanded on other grounds, Amendment to Final Determination of Sales at Less than Fair VAlue and Antidumping Duty Order: Chrome-Plated Lug Nuts from the People's Republic of China (57 FR 15052, April 24, 1992) (Lug Nuts Remand). Based on this, petitioner contends that the Georgetown Steel decision does not preclude the Department from applying the CVD law to the PRC. Thus, the PRC's bounties or grants are countervailable under 19 U.S.C. 1303.

DOC Position: In 1984 decisions involving carbon steel wire rod from Czechoslovakia and Poland (49 FR 19370, May 7, 1984) ("*Wire Rod*"),the Department determined that it would not impose the market-based concept of a subsidy on a system where subsidies have no meaning and cannot be fairly identified or quantified. We further concluded that under such circumstances Congress could not have intended to apply the CVD law to NME countries. The Department's determinations were subsequently upheld by the Federal Circuit in Georgetown Steel. Thereafter, Congress rejected legislation which would have overturned Georgetown Steel. See H.R. Rep. No. 576, 100th Cong., 2d Sess. 628 (1988).

However, in 1988, Congress also amended the AD law to include section 773(c)(1)(B) which permits the Department to use its normal market economy methodologies in determining foreign market value (FMV) even though the subject merchandise is from a country which the Department has determined to be an NME. This change was added in recognition of attempts by the traditional NME countries to evolve toward market-oriented economies. Congress clearly contemplated a situation in which a sector of an NME may be sufficiently free of NME distortion so that the actual prices and/or costs incurred in the NME could be used in dumping calculations and render meaningful results. If the prices and costs in a sector of an NME are determined to be sufficiently market-oriented to serve as the bases for FMV, it follows that any subsidies would also have meaning and could be fairly identified and quanitified. Therefore, the CVD law can be applied.

In addition, if the Department were able to identify a sector in an NME that was sufficiently market-oriented to permit use of the NME producers' prices or costs in an AD investigation, United States industries would be left at a disadvantage if they were not able to seek protection from subsidies to that producer. The NME government could use subsidies to minimize AD margins with impunity if the CVD law did not apply. Clearly, Congress could not have intended such a result. On the other hand, if an industry is determined to be nonmarket, so that the Department would have to value the factors of production in a surrogate country, subsidies to the NME producers become irrelevant— any AD margin would not be calculated using NME Prices potentially influenced by subsidies. Therefore, the CVD law may be applied to industries in NME countries if the Department finds that the relevant industry is an MOI.

Comment 2: Polaray and Wing Tat assert that the Department should reclassify the PRC as a market economy. They claim that the information in the verification reports could be used to overturn the Department's designation of the PRC as an NME based on the factors listed in 19 U.S.C. § 1677(18)(B). If the Department chooses not to reclassify the entire country, then they argue that pursuant to this statute, the Department could designate Guangdong province as a market economy, since it is more market-oriented than other areas of China.

DOC Position: We disagree with Polaray's and Wing Tat's request that the Department reclassify the PRC as a market economy country. While Section 771 (18)(C)(ii) does provide that the Department "may make a determination under subparagraph (A) with respect to any foreign country at any time," these respondents have not provided any information or arguments addressing the factors to be considered in making NME determinations which are listed in Section 771 (18)(B). Therefore, no basis

exists for the Department to revoke the PRC's NME status. In addition, the information collected by the Department during the course of the proceedings focuses on the PRC fans sector, not the PRC economy as a whole or a particular geographic area.

Comment 3: Petitioner asserts that the Department's preliminary determinations in these investigations and its use of the "mix and match" approach in the AD proceedings on the same products are fundamentally inconsistent. Lasko states that in the Final Determination of Sales at Less Than Fair Value: Oscillating Fans and Ceiling Fans From the People's Republic of China (56 FR 55271, October 25, 1991) (Fans), the Department principally used the actual production costs incurred by the PRC producers for raw material inputs purchased from market economy countries to value the PRC manufacturers' factors of production. In the present investigations, the Department preliminarily determined that the prices for raw material inputs are not market-driven for purposes of the CVD law. Petitioner asserts that these two approaches are fundamentally inconsistent. The Department must eliminate either the "mix and match" approach or the three part MOI test in order to provide U.S. industries a remedy against unfair trade practices by economies in transition.

Respondents disagree with petitioner. In their view, the Department's decision to rely on the actual acquisition prices of imported inputs purchased in market economy countries in the AD investigations is compatible with a conclusion that the CVD law is inapplicable to imports from an NME. They concede that where the Department uses the prices of domestically-sourced inputs in an NME, there is a risk that these values may be distorted by upstream subsidies bestowed upon the input supplier. Moreover, if the Department refused to investigate such subsidies, the petitioner would get neither the protection of the CVD law nor the use of subsidy-free input values from market economies in the calculation of FMV. However, when the prices of imported inputs from market economy countries are used to value the factors of production, there can be no presumption that they are subsidized, and, even if they were, such benefits, bestowed by the government of the country of the input production, would not be countervailable under U.S. law.

Repondents argue further that it would be unfair to PRC producers that use imported inputs for the Department to apply both the CVD law and the surrogate valuation approach in AD investigations. If the Department applied the CVD law to an industry in which the surrogate methodology had been applied, the NME producer would be penalized a second time for the same subsidy.

DOC Position: The Department's determinations in the AD and CVD investigations are consistent with each other.

In the AD investigations, the Department determined that the PRC fans industry did not sufficiently overcome the presumption that the prices for PRC-sourced inputs were not market-based. See Fans. Although several respondents claimed that the prices of various PRC-sourced inputs were market driven because they were purchased in market economy currencies, the normal NME methodology for calculating FMV was used (*i.e.*, surrogate values were used to value the factors of production for PRC-sourced parts). However, materials sourced from market economy countries and paid for in convertible currencies were valued using the actual market prices reported by the respondents. Surrogate values were not used for the imported inputs.

In this notice of final negative countervailing duty determinations, we are determining that the PRC fans industry is not an MOI because of the extent of state involvement in the production of significant inputs purchased locally by PRC fan producers. This is the same conclusion the Department reached in its final determination in the AD investigation; that the prices and costs for particular PRC-sourced inputs are not market-based. The MOI test has no relevance to the Department's determination to use the prices and costs of inputs sourced from market economy countries and paid for in a market economy currency.

Comment 4: Petitioner argues that the Department's MOI test is far more restrictive than the requirements set out in Georgetown Steel. In particular, the third part of the test requires the PRC to become more market-oriented than current market economies before the CVD law will be applied. For example, petitioner asserts that based on this test, the CVD law could not have been applied to industries involved in the following affirmative CVD determinations: Final Affirmative Countervailing Duty Determination: Aluminum Sulfate from Venezuela (54 FR 43440, October 25, 1990); Carbon Black from Mexico (41 FR 30385, August 26, 1986), remanded on other grounds, *Cabot Corporation* v. *United States*, Slip Op. 88-96, 10 ITRD 1736 (1988); Preliminary Affirmative Countervailing Duty Determination: Softwood Lumber Products from Canada (57 FR 8800, March 12, 1992); and Preliminary Affirmative Countervailing Duty Determination: Certain Carbon Steel Products from Brazil (49 FR 5157, February 10, 1984). In each of these cases, petitioner maintains that inputs were supplied to firms by government-owned enterprises at fixed prices.

Lastly, petitioner contends that the Department's MOI test is "tantamount to a restrictive amendment to statutory law without legislative or constitutional authority" and it must be withdrawn. Petitioner asserts that the Department's MOI test constitutes a "rule" within the meaning of 5 U.S.C. 551(4) and is subject to the rule-making requirements of the Administrative Procedure Act ("an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy * * *"). By applying the MOI test to the present investigation and to future NME investigations, petitioner argues that the Department has not adhered to the rule-making requirements prescribed by 5 U.S.C. 553.

DOC Position: The Department rejects petitioner's argument that it is required to conduct a rule-making proceeding pursuant to the Administrative Procedures Act, 5 U.S.C. 553, for its MOI test. As the U.S. Supreme Court has recognized, an agency in the administration of a statute has a choice between proceeding by rule-making or decision-making on a case-by-case basis. *Securities and Exchange Commission* v. *Chenery Corp.*, 332 U.S. 202, 203 (1947) (Chenery); see also, *Zenith Electronics Corporation* v. *United States*, 755 F.Supp. 397 (CIT, 1990); *see contra, Ipsco* v. *United States*, 687 F. Supp. 614 (CIT, 1988). This decision lies primarily within the informed discretion of the administering authority. The Supreme Court further recognized that an "agency may not have had sufficient experience with a particular problem to warrant rigidifying its tentative judgement into a hard and fast rule." Chenery, 332 U.S., at 202. Such is the case here.

In 1988, Congress amended the AD statute to include section 773(c)(1)(B), which permits the Department to use its normal market economy methodology for FMV even though the country involved in the administrative proceeding is an NME country. Until recently, the Department has not had to focus on the question of how this

provision of the statute could be met. During the past year, the Department has had several administrative proceedings which have involved claims pursuant to section 773(c)(1)(B). Therefore, the Department has attempted to develop the appropriate standards for the application of this provision. The Department's initial test was developed in Final Determination of Sales at Less Than Fair Value: Chrome-Plated Lug-Nuts from the People's Republic of China (56 FR 46153, September 10, 1991) (Lug-Nuts); and Final Determination of Sales at Less Than Fair Value: Oscillating Fans and Ceiling Fans from the People's Republic of China (55 FR 55271, October 25, 1991). However, in the Lug-Nuts Remand the Department found that the scope of its test was too narrow. As a result of that remand, the Department issued an amended final determination published on April 24, 1992 modifying its developing NME methodology as currently embodied in the MOI test. As discussed above, we applied the MOI test in this case and found that the fans industry in the PRC was not sufficiently market-oriented to be designated an MOI under the test.

While the Department could have promulgated a regulation in 1988 establishing a test, the failure of the Department to anticipate this problem and promulgate a general rule does not mean that the Department does not have the authority to fulfill its statutory duty in this case. Chenery, 332 U.S. at 201–202. To restrict the administrative process to require the Department to first promulgate regulations before it has experience with particular situations "would stultify the administrative process." *Id.* at 202.

The Department also disagrees with petitioner's assertion that the Department's MOI test is far more restrictive than the requirements set out in Georgetown Steel. The MOI test specifically addresses the court's concerns in Georgetown Steel regarding the distortions caused by extensive government involvement in the economy. We believe that each part of the MOI test attempts to gauge the extent to which NME prices and costs are market-determined and not distorted by central government economic planning.

The MOI test is designed to solicit information which enables the Department to evaluate (i) state involvement in the provision of inputs, and (ii) the ability of companies in an NME to respond to market signals in their pricing/output decisions, or in a more general sense, to act as profit maximizers. For example, the first part of the test addresses the extent of government involvment in the pricing and production decisions of the companies producing the merchandise under investigation. The second part of the test deals with particular types of ownership and the ability of certain types of enterprises to respond to "market" signals with respect to investment or disinvestment. The third part of the test focuses on inputs and the market distortion that may result from the PRC's central planning activities for those inputs. An analysis of each element of the test will result in a thorough evaluation of the extent to which market forces exist within a particular sector in an NME. Conversely, the deletion of any one of these elements from the MOI test would limit the Department's ability to address the specific characteristics and distortions identified by the court in Georgetown Steel.

Some parties have claimed that the inappropriateness of the MOI test is obvious because of the inability of many market economy countries to meet the test's requirements. The MOI test was designed only to apply to NMEs and for a specific purpose: to assess the extent to which distortions caused by extensive government involvement in an NME exist in a particular industry. The Department recognizes that governments intervene and regulate certain markets or sectors in many countries which the Department has treated as market economies. The government's intervention, however, must be viewed against the backdrop of the larger market economy in which a particular sector or market is embedded. There is a reasonable presumption that the market economy influences of a market economy predominate over the influence of any sector or market in which there is government intervention or regulation. Therefore, because of the predominance of the market forces of the larger economy, this presumption cannot be overcome and the MOI test is irrelevant within the context of a market economy country.

In an NME, however, the contrary presumption obtains: Nonmarket forces permeate the economy. However, the Department considers it possible that market forces within a sector or industry, if strong enough, can overcome the NME forces that would normally prevail. Thus, the presumption of nonmarket orientation exists from case to case, regardless of the industry, until overturned. While section 773(c)(1)(B) of the Act clearly allows for the possibility that market forces may predominate in specific sectors or industries, we believe those instances will be rare.

Comment 5: Lasko contests the Department's dismissal of its upstream subsidy allegation regarding the steel inputs used by the Chinese fan producers. According to the petitioner, the Department, in its May 15, 1992 letter, stated that an upstream subsidy cannot be countervailable unless the downstream industry passes the MOI test. Petitioner contends that based on this decision, the Department prejudged the issue since the final determination would not be made until June 1, 1992. In addition, petitioner asserts that the Department would not be able to investigate the upstream subsidies until after this investigation is completed, resulting in a "perversion of the remedial purpose of the statute."

DOC Position: The Department disagrees with petitioner's contention that the Department prejudged this issue in rejecting the upstream subsidy allegation. As stated in the Department's letter of May 15, 1992, in order for an upstream allegation to be viable in an NME case, the Department would first have to determine that the "downstream" industry being investigated is characterized by market activity. The letter also indicated that the petitioner had "provided no evidence demonstrating that [the Department's] preliminary determination should be reversed." Therefore, there was no legal basis on which an upstream subsidy investigation could be sustained. Furthermore, as stated in the "Case History" section of this notice, petitioner's upstream subsidy allegation was also dismissed because of certain other deficiencies. See the "Case History" section of this notice.

Comment 6: Polaray and Wing Tat assert that they meet all three criteria of the Department's MOI test. These companies state that verification established that "there is no government involvement in setting prices of ceiling fans or amounts to be produced" and "that the fans industry is characterized by private or collective ownership of the producers under investigation." With respect to the third part of the MOI test, these companies assert that they import most of their inputs from market economies and pay for these inputs in convertible currencies. Because they claim that an insignificant proportion of the material inputs used in their production processes are sourced in the PRC and are not influenced by the GPRC, Polaray and Wing Tat request that the Department determine that Polaray and Wing Tat are market-

oriented producers and do not benefit from subsidies bestowed by the PRC government.

DOC Position: Regardless of Polaray's and Wing Tat's situations, the CVD law focuses on whether the industry producing the subject merchandise is being subsidized, and the Department's MOI test focuses on the industry's market orientation. Because the Department has determined that the PRC fans industry is not market-oriented, the Department will not make a determination with respect to individual companies within the industry.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d)).

Dated: June 1, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-13237 Filed 6-4-92; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

ACTION: Notice of Application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. sections 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, room 1800H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 92-00007." A summary of the application follows.

Summary of the Application

Applicant: EXIM International, The Pennsylvanian, 1100 Liberty Avenue, suite 817, Pittsburgh, Pennsylvania 15222, Contact: Mark A. Goldstein, Esquire, Telephone: (412) 263-2773.

Application No.: 92-00007.

Date Deemed Submitted: May 26, 1992.

Members (in addition to applicant): None.

Export Trade: 1. *Products.* All Products. 2. *Services.* All Services. 3. *Technology Rights* Technology rights, including, but not limited to, patents, trademarks, copyrights, trade secrets, that relate to Products and Services. 4. *Export Trade Facilitation Services (as they relate to the Export of Products).* Export Trade Facilitation Services including professional services in the areas of government relations and assistance with state and federal programs; foreign trade and business protocol; consulting; market research and analysis; collection of information on trade opportunities; marketing; negotiations; joint ventures; shipping; export management; export licensing; advertising; documentation and services related to compliance with customs requirements; insurance and financing; trade show exhibitions; organizational development; management and labor strategies; transfer of technology; transportation; and facilitating the formation of shippers associations.

Export Markets: The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

1. To engage in Export Trade in the Export Markets, EXIM seeks to:

a. Provide and/or arrange for the provision of Export Trade Facilitation Services;

b. Engage in promotional and marketing activities and collect information on trade opportunities in the Export Markets and distribute such information to clients;

c. Enter into exclusive and/or non-exclusive licensing and/or sales agreements with Suppliers for the export of Products, Services, and/or Technology Rights to Export Markets;

d. Enter into exclusive and/or non-exclusive agreements with distributors and/or sales representatives in Export Markets;

e. Allocate export sales or divide Export Markets among Suppliers for the sale and/or licensing of Products, Services, and/or Technology Rights;

f. Allocate export orders among Suppliers;

g. Establish the price of Products, Services, and/or Technology Rights for sale and/or licensing in Export Markets;

h. Negotiate, enter into, and/or manage licensing agreements for the export of Technology Rights;

i. Enter into contracts for shipping.

2. EXIM and individual Suppliers may regularly exchange information on a one-on-one basis regarding inventories and near-term production schedules in order that the availability of supplies for export can be determined and effectively coordinated by EXIM with its distributors in Export Markets.

Definition

Supplier means a person who produces, provides, or sells Products, Services, or Technology Rights.

Dated: May 29, 1992.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 92-13181 Filed 6-4-92; 8:45 am]

BILLING CODE 3510-DR-M

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Amended Export Trade Certificate of Review, Application No. 90-2A006.

SUMMARY: The Department of Commerce has issued an amendment to

the Export Trade Certificate of Review granted to the Forging Industry Association (FIA) on May 29, 1992. The original Certificate was issued on July 9, 1990. Notice of issuance of the Certificate was published in the **Federal Register** on July 13, 1990 (55 FR 28801).

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Adminstration, 202–377–5131. This is not a toll-fee number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (1990) (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs (OETCA) is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Secretary of Commerce to publish a summary of a Certificate in the **Federal Register.** Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Export Trade Certificate of Review No. 90–00006, was issued to the Forging Industry Association ("FIA") on July 9, 1990 (55 FR 28801, July 13, 1990), and previously amended on April 30, 1991 (56 FR 21128, May 7, 1991).

FIA's Export Trade Certificate of Review has been amended to:

1. Add the following eight companies as "Members" within the meaning of § 325.2 (1) of the Regulations (15 CFR 325.2(1)): The Drop Dies & Forgings Co., Cleveland, OH; FMC Steel Products Division, Anniston, AL, (controlling entity: FMC Corporation, Chicago, IL); Hussey Marine Alloys LTD., Leetsdale, PA; Earle M. Jorgensen Co., Forge Division, Seattle, WA; (controlling entity: Earle M. Jorgensen Co., Seattle, WA); KomTek, Worcester, MA (controlling entity: Kervick Enterprises Inc., Worcester, MA); Ladish Co., Inc., Cudahy, WI; Union Forging Company, Endicott, NY (controlling entity: UIS, Inc., New York, NY); Western Forge & Flange Co., Santa Clara, CA; and

2. Delete Bethlehem Steel Corporation, BethForge Division, Bethlehem, PA as a "Member" within the meaning of § 325.2(1) of the Regulations (15 CFR 325.2 (1)).

A copy of the amended Certificate will kept in the International Trade Administration's Freedom of Information Records Inspection Facility, room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: June 1, 1992.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 92–13180 Filed 6–4–92; 8:45 am]

BILLING CODE 3510–DR–M

International Trade Admiistration

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews: Request for Panel Review

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first Request for Panel Review of final affirmative injury determination made by the Canadian International Trade Tribunal respecting Machine Tufted Carpeting Originating in or Exported From the United States of America filed by General Felt Industries, Inc. with the Canadian Section of the Binational Secretariat on May 27, 1992.

SUMMARY: On May 27, 1992, General Felt Industries, Inc. filed a Request for Panel Review with the Canadian Section of the Binational Secretariat pursuant to Article 1904 of the United States-Canada Free-Trade Agreement. Panel review was requested of the final affirmative injury determination made by the Canadian International Trade Tribunal respecting machine tufted carpeting originating in or exported from the United States of America. The Binational Secretariat has assigned Case Number CDA–92–1904–02 to this request.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 377-5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the **Federal Register** on December 27, 1989 (54 FR 53165). The panel review in this matter will be conducted in accordance with these Rules.

Rule 35(2) requires the Secretary of the responsible Section of the FTA Binational Secretariat to publish a notice that a first Request for Panel Review has been received. A first Request for Panel Review was filed with the Canadian Section of the Binational Secretariat, pursuant to Article 1904 of the Agreement, on May 27, 1992, requesting panel review of the final determination described above.

Rule 35(1)(c) of the Rules provides that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is June 26, 1992);

(b) A Party, investigating authority or interested person, that does not file a Complaint may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the Deadline for filing a Notice of Appearance is July 13, 1992);

(c) In the case of a final determination made in Canada, any person that would be entitled to appear and be represented in a judicial review of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is July 13, 1992); and

(d) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and

substantive defenses raised in the panel review.

Dated: June 2, 1992.

James R. Holbein,

United States Secretary, FTA Binational Secretariat.

[FR Doc. 92-13238 Filed 6-4-92; 8:45 am]

BILLING CODE 3510-GT-M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Request for Panel Review

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of First Request for Panel Review of the final affirmative countervailing duty determination made by the Department of Commerce, International Trade Administration, Import Administration, respecting Certain Softwood Lumber Products from Canada, filed by the Government of Canada, the Governments of Alberta, British Columbia, Manitoba, Ontario and Saskatchewan, the Gouvernement du Quebec, the Governments of the Northwest Territories and the Yukon Territory, and the Canadian Forest Industries Council and affiliated companies with the United States Section of the Binational Secretariat on May 28, 1992.

SUMMARY: On May 28, 1992, the Government of Canada, the Governments of Alberta, British Columbia, Manitoba, Ontario and Saskatchewan, the Gouvernement du Quebec, the Governments of the Northwest Territories and the Yukon Territory, and the Canadian Forest Industries Council and affiliated companies filed a Request for Panel Review with the United States Section of the Binational Secretariat pursuant to Article 1904 of the United States-Canada Free-Trade Agreement. Panel review was requested of the final affirmative countervailing duty determination made by the Department of Commerce, International Trade Administration, Import Administration, respecting Certain Softwood Lumber Products from Canada, made by the International Trade Administration, Import Administration, Import Administration File Number C-122-816. The Binational Secretariat has assigned Case Number USA-92-1904-01 to this Request.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 377-5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the **Federal Register** on December 27, 1989 (54 FR 53165). The panel review in this matter will be conducted in accordance with these Rules.

Rule 35(2) requires the Secretary of the responsible Section of the FTA Binational Secretariat to publish a notice that a first Request for Panel Review has been received. A first Request for Panel Review was filed with the United States Section of the Binational Secretariat, pursuant to Article 1904 of the Agreement, on May 28, 1992, requesting panel review of the final determination described above.

Rule 35(1)(c) of the Rules provides that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is June 29, 1992);

(b) A Party, investigating authority or interested person that does not file a Complaint may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is July 13, 1992); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: June 2, 1992.

James R. Holbein,

United States Secretary, FTA Binational Secretariat.

[FR Doc. 92-13239 Filed 6-4-92; 8:45 am]

BILLING CODE 3510-GT-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List services to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: July 6, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On April 10, 1992, the Committee for Purchase from the Blind and Other Severely Handicapped published notice (57 FR 12480) of proposed addition to the Procurement List.

After consideration of the material presented to it concerning the capability of a qualified nonprofit agency to provide the services at a fair market price and the impact of the addition on the current or most recent contractor, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will not have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Janitorial/Custodial, U.S. Army Reserve Center for the following locations:
East Windsor, Connecticut
West Hartford, Connecticut
Windsor Locks, Connecticut
Janitorial/Custodial, U.S. Army Reserve Center, 200 Baker Road, Pittsfield, Massachusetts

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 92–13211 Filed 6–4–92; 8:45 am]

BILLING CODE 6820–33–M

Procurement List; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: July 6, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodity and services to the Procurement List:

Commodity

Necktab, Women's Shirt, 8445–01–317–1620
Nonprofit Agency: Northeastern Association for the Blind at Albany, Albany, New York

Services

Grounds Maintenance: Travis Air Force Base, California
Nonprofit Agency: Phoenix Programs, Inc., Concord, California
Grounds Maintenance for the following locations:
Marine Corps Base, Camp LeJeune, North Carolina
Marine Corps Air Station, New River, Jacksonville, North Carolina
Nonprofit Agency: Coastal Enterprises of Jacksonville, Inc., Jacksonville, North Carolina
Laundry Service: Portsmouth Naval Hospital, Portsmouth, Virginia
Nonprofit Agency: Lewis W. Eggleston Center, Norfolk, Virginia

Beverly L. Milkman,

Executive Director.

[FR Doc. 92–13212 Filed 6–4–92; 8:45 am]

BILLING CODE 6820–33–M

Procurement List; Proposed Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed addition to Procurement List.

SUMMARY: The Committee has received a proposal to add to the Procurement List a commodity to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: July 6, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action. If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity listed below from a nonprofit agency employing individuals who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organization that will furnish the commodity to the Government.

2. The action will result in authorizing a small entity to furnish the commodity to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification

on which they are providing additional information.

It is proposed to add the following commodity to the Procurement List:

Arming Adapter, Self-Adjusting, 1325-01-159-8083
Nonprofit Agency: New Ventures, Inc., LaGrange, Georgia.

Beverly L. Milkman,

Executive Director.

[FR Doc. 92-13213 Filed 6-4-92; 8:45 am]

BILLING CODE 6820-33-M

COPYRIGHT ROYALTY TRIBUNAL

[CRT Docket No. 92-1-90CD]

Ascertainment of Whether Controversy Exists Concerning 1990 Distribution of Cable Royalty Fund

AGENCY: Copyright Royalty Tribunal.

ACTION: Notice.

SUMMARY: The Copyright Royalty Tribunal directs all claimants to royalty fees paid by cable operators for secondary transmission during 1990 (Phase I and Phase II) to submit any comments concerning whether a controversy exists with regard to the distribution of the 1990 cable royalty fees. All claimants intending to participate in the 1990 proceeding shall include with their comments a Notice of Intent to Participate. Any particular controversy, Phase I or Phase II, of which the Tribunal does not become advised by the end of the comment period will not be considered at a later date without a showing of good cause. Specifically for Phase II each claimant must state each program category in which he or she has an interest which by the end of the comment period has not yet been satisfied by private agreement.

DATES: Comments are due July 15, 1992.

ADDRESSES: An original and five copies of the comments shall be addressed to: Chairman, Copyright Royalty Tribunal, 1825 Connecticut Avenue, NW., suite 918, Washington, DC 20009.

FOR FURTHER INFORMATION CONTACT: J.C. Argetsinger, Commissioner, Coyright Royalty Tribunal, 1825 Connecticut Avenue, NW., suite 918, Washington, DC 20009 (202) 606-4400.

Dated: June 1, 1992.

Cindy Daub,

Chairman.

[FR Doc. 92-13215 Filed 6-4-92; 8:45 am]

BILLING CODE 1410-09-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Contract Administration Working Group of the DOD Advisory Panel on Streamlining and Codifying Acquisition Laws

AGENCY: Defense Systems Management College, DOD.

ACTION: Request for public comment.

SUMMARY: The Contract Administration Working Group of the DOD Advisory Panel is reviewing the following laws relating to claims and disputes:

5 U.S.C. 581 *et seq.*—Alternative Means of Dispute Resolution in the Administrative Process
a. 5 U.S.C. 581—Definitions
b. 5 U.S.C. 582—General authority
c. 5 U.S.C. 583—Neutrals
d. 5 U.S.C. 584—Confidentiality
e. 5 U.S.C. 585—Authorization of arbitration
f. 5 U.S.C. 586—Enforcement of arbitration agreement
g. 5 U.S.C. 587—Arbitrators
h. 5 U.S.C. 588—Authority of arbitrators
i. 5 U.S.C. 589—Arbitration proceedings
j. 5 U.S.C. 590—Arbitration awards
k. 5 U.S.C. 591—Judicial review
l. 5 U.S.C. 592—Compilation of information
m. 5 U.S.C. 593—Support services
10 U.S.C. 2405—Limitation on adjustment of shipbuilding contracts
10 U.S.C. 2410—Contract claims; certification
10 U.S.C. 7365—Settlement of claims
28 U.S.C. 1346—United States as defendant
28 U.S.C. 1491—Claims against United States generally; actions involving Tennessee Valley Authority
28 U.S.C. 1499—Liquidated damages withheld from contractors under Contract Work Hours and Safety Standards Act
28 U.S.C. 2672—Administrative adjustment of claims
28 U.S.C. 2673—Reports to Congress
28 U.S.C. 2674—Liability of the United States
28 U.S.C. 2675—Disposition by federal agency as prerequisite; evidence
28 U.S.C. 2676—Judgment as bar
28 U.S.C. 2677—Compromise
28 U.S.C. 2678—Attorney fees; penalty
28 U.S.C. 2679—Exclusiveness of remedy
28 U.S.C. 2680—Exceptions
31 U.S.C. 1304—Judgments, awards and compromise settlements
31 U.S.C. 3717—Interest and penalty of claims
31 U.S.C. 3726—Payment for transportation
31 U.S.C. 3807—Right to administrative offset
41 U.S.C. 601—Definitions
41 U.S.C. 602—Applicability of law
41 U.S.C. 603—Maritime contracts
41 U.S.C. 604—Fraudulent claims
41 U.S.C. 605—Decision by contracting officer
41 U.S.C. 606—Contractor's right of appeal to board of contract appeals
41 U.S.C. 608—Small claims
41 U.S.C. 609—Judicial review of board decisions
41 U.S.C. 610—Subpoena, discovery and deposition
41 U.S.C. 611—Interest
41 U.S.C. 612—Payment of claims
41 U.S.C. 613—Separability of provisions
Public Law 99-509, Part B—Program Fraud Civil Remedies Act of 1986

Working Group 3 has also identified an error in the numbering of certain sections in title 5. Ten sections numbers in this title have been used twice for different code sections. Working Group 3 is interested in receiving comments about and will be reviewing 5 U.S.C. 581 *et seq.* regarding Alternative Means of Dispute Resolution in the Administrative Process. The Working Group will not be reviewing the statutes regarding Negotiated Rulemaking Procedure, which are also numbered as 5 U.S.C. 581 through 5 U.S.C. 590.

Working Group 2, Contract Formation, is in the process of reviewing the area of bid protests and has previously solicited comments on that subject. Working Group 3 will not be reviewing this aspect of the claims and dispute area.

Request responses to the following questions on each law:

—Is the law serving its intended purpose?
—Has the law created inefficiencies?
—Has it unduly burdened the buyer/seller relationship?
—Is it required for the continuing financial and ethical integrity of defense procurement programs?
—Is it required to protect the best interests of DOD?
—Is the law still relevant?
—Does it overlap, duplicate, or conflict with other laws?
—Does it contain ambiguous terms or provisions which have led to problems in interpretation?
—Should the law apply to commercial products?
—Should it apply to first tier subcontracts, or all subcontracts?

The panel also solicits suggestions of other laws relating to claims and disputes.

The Contract Administration Working Group will be presenting initial recommendations on the laws relating to claims and disputes to the panel at its July 16, 1992 meeting. Comments must be received by July 2, 1992 in order to be fully considered by the Working Group.

Individuals and organizations wishing to provide information to the Contract Administration Working Group may provide the information to Ms. Diane Sidebottom, Acquisition Law Task Force, at Defense Systems Management College, 8580 Cinderbed Road, suite 800, Newington, VA 22122 (703-355-2665).

Dated: June 1, 1992.

L.M. Bynum,

Alternative OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–13198 Filed 6–4–92; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Military Traffic Management Symposium, Open Meeting

AGENCY: Military Traffic Management Symposium, DOD.

ACTION: Notice of open meeting.

1. In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–462) announcement is made of the following committee meeting:

Name of the Committee: Military Traffic Management Symposium, DOD.

Date of the Meeting: 18 June 1992.

Time: 0830–1630 hours.

Place: Best Western Old Colony Inn, Alexandria, VA.

Proposed Agenda:

2. To provide an open discussion and free exchange of ideas with the public on procedural changes to the Personal Property Traffic Management Regulation, DOD 4500.34R, and the handling of other matters of mutual interest concerning the Department of Defense Personal Property Moving and Storage Program.

3. All interested persons desiring to submit topics for discussion, should contact the Commander, Military Traffic Management Command, Attn: MTPP–M, (703) 756–1600, between 0800 and 1630 hours.

Gregory D. Showalter,

Alternate Army Federal Rgister Liaison Officer.

[FR Doc. 92–13183 Filed 6–4–92; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Support of High Sulfur Coal Research

AGENCY: U.S. Department of Energy.

ACTION: Notice of noncompetitive financial assistance (Cooperative Agreement) award.

SUMMARY: The Department of Energy (DOE), announces that pursuant to 10 CFR 600.7(b), it is intending to award a cooperative agreement on a noncompetitive basis to the State of Illinois, Department of Energy and Natural Resources (ENR) for the "Support of High Sulfur Coal Research."

SCOPE: The objective of this project is to stimulate the utilization of high-sulfur coal, the predominant generic coal type found in the Illinois Basin as well as in other important bituminous coal producing regions in the United States, while meeting New Source Performance Standards and the National Environmental Policy Act through Producing Liquid, Gaseous and Solid Fuels and Chemicals from Coal, Coal Preparation, Combustion, Coal Characterization, Related Coal Desulfurization Studies, and Flue Gas and Gas Stream Cleanup. The intended research will: (1) Convert coal partially or completely into premium quality liquids and gases, and produce solid fuel forms and/or chemicals that are distinctly different from the original coal; (2) develop precombustion coal cleaning methods for removing noxious elements, especially sulfur, contained in coal; (3) develop advanced combustion technologies that will not only meet stringent emission regulations but also maintain or increase thermal efficiency and combustor performance; (4) transfer the technological information developed to industry through publications and regularly held conferences and workshops. The State of Illinois will make available to this project the personnel, material and other facilities necessary for carrying out a research program dedicated to solving problems inherent in the use of high-sulfur coal.

In accordance with the criteria presented under 10 CFR 600.7(b)(2)(i) criteria (A), (B), and (D), the State of Illinois has been selected as the cooperative agreement recipient. This activity would be solely conducted by the State of Illinois using its own resources; however, DOE support of the activity would enhance the public benefits derived by cosponsoring work in areas for which there is insufficient funding available, and by preventing duplications of effort in parallel DOE/State of Illinois R&D. Additionally, by pursuing its own research and development program since 1982, the State of Illinois has become a unique repository of the extensive data and information relating to the high-sulfur coals endemic to the Illinois Basin.

The project period of the cooperative agreement is for three years with an initial funding period of twelve months. The estimated value for the initial funding period is $2,932,458.00. This funding level will be equally shared between DOE and the State of Illinois.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, Attn: Robert L. Baker, P.O. Box 10940, MS 921–118, Pittsburgh, PA 15236, Telephone: AC (412) 892–6154.

Richard D. Rogus,

Contracting Officer.

[FR Doc. 92–13228 Filed 6–4–92; 8:45 am]

BILLING CODE 6450–01–M

Savannah River Field Office (SR) Financial Assistance Award Intent to Award a Noncompetitive Grant

AGENCY: U.S. Department of Energy.

ACTION: Notice of noncompetitive award of cooperative agreement.

SUMMARY: The DOE announces that it plans to award a renewal agreement to South Carolina Water Resources Commission (SCWRC), Division of Geology/Hydrology, Columbia, South Carolina, for continuation of the project "A Geohydrologic Investigation and Establishment of a Permanent Multi-Observational Well Network in Aiken, Allendale, and Barnwell Counties, South Carolina." The cooperative agreement will be extended for a five-year perid with DOE support of $2,048,000; SCWRC will cost share $820,331 during the period. Pursuant to § 600.7(b)(2)(i)(A) of the DOE Assistance Regulations (10 CFR part 600), DOE has determined that the activity to be funded is necessary for the satisfactory completion of an activity presently being funded by DOE and eligiblity for this award shall be limited to SCWRC.

FURTHER INFORMATION CONTACT: Elizabeth T. Martin, Prime Contracts and Financial Assistance Branch, U.S. Department of Energy, Savannah River Field Office, P.O. Box A, Aiken, SC 29802, Telephone: (803) 725–2191.

SUPPLEMENTARY INFORMATION:

PROCUREMENT REQUEST NUMBER: 09–92SR15160.001.

PROJECT SCOPE: In 1986, SCWRC began constructing a high quality observational well network at locations in Aiken, Allendale, and Barnwell counties to obtain geohydrologic data to define the stratigraphy and groundwater conditions beneath and around the Savannah River Site (SS). Continuation of this project will allow for completion of the planned well-cluster system (eleven well clusters containing a total of about 82 observational wells) and will provide detailed information concerning the lithology, stratigraphy, and hydrogeology outside SRS and how it relates to similar studies conducted onsite. The project will provide a long-term observation network to: (1)

Continually monitor water levels, head relationships, and flow paths; (2) monitor water quality; and (3) detect changes in these parameters as groundwater pumpage increases or decreases in an around SRS.

SCWRC is the authorized and qualified state agency to perform the functions covered under the agreement. The primary purpose of the award is to ensure the citizens of South Carolina that their health, safety, and environment are being protected through a program of independent monitoring and oversight by the state.

Issued in Aiken, South Carolina on: May 22, 1992.

Robert E. Lynch,

DOE Savannah River Field Office, Head of Contracting Activity Designee.

[FR Doc. 92-13229 Filed 6-4-92; 8:45 am]

BILLING CODE 6450-01-M

Noncompetitive Financial Assistance Award

AGENCY: U.S. Department of Energy.

ACTION: Acceptance of an unsolicited proposal application of a grant award with Texas A&M Research Foundation.

SUMMARY: The U.S. Department of Energy (DOE), Pittsburgh Energy Technology Center announces that pursuant to 10 CFR 600.14 (D) and (E), it intends to make a Non-Competitive Financial Assistance (Grant) Award through the Pittsburgh Energy Technology Center (PETC) to the Texas A&M Research Foundation for "Development and Use of an Apparatus to Measure the Dynamic Surface Properties of Coal-Water-Slurry Fuels for Applications to Atomization Characteristics."

SUPPLEMENTAL DATA: *Grant No.:* DE-FG22-92PC92156.

Title: "Development and Use of an Apparatus to Measure the Dynamic Surface Properties of Coal-Water-Slurry Fuels for Applications to Atomization Characteristics".

Awardee: Texas A&M Research Foundation.

Term: 12 months.

Cost: Total estimated cost is $53,741. There will be no cost-sharing involved in this transaction; financial assistance will be provided by the Federal Government to the Texas A&M Research Foundation.

SCOPE: The proposed research presents a unique method for measurement of dynamic surface tension and surface dilatational viscosity properties, and could provide insight into the droplet-forming mechanism of the coal-water-slurry atomization process. The effects of the measured properties will be used to describe the atomization behavior and performance, and further to select the optimum atomizer operating conditions. The dynamic surface tension and surface dilatational viscosity will be measured to investigate a new way of describing the slurry spray characteristics. This will contribute significantly to the knowledge base for the spray correlations for non-Newtonian fuels such as coal-water-slurry. DOE support of this activity will benefit the academic community in developing the theory of slurry atomization as well as slurry nozzle manufacturers and users who will benefit by the improved understanding of spray characteristics.

FOR FURTHER INFORMATION WRITE TO: U.S. Department of Energy, Pittsburgh Energy Technology Center, Attn: Ms. Mary S. Price, Contract Administrator, Acquisition and Assistance Division, P.O. Box 10940, MS 921-118, Pittsburgh, PA 15236.

Dated: May 20, 1992.

Beth H. Peterman,

Chief, Administrative Support Group, Acquisition and Assistance Division.

[FR Doc. 92-13230 Filed 6-4-92; 8:45 am]

BILLING CODE 6450-01-M

Conservation and Renewable Energy Office

Award Based on Acceptance of an Unsolicited Application American Solar Energy Society (ASES)

AGENCY: Conservation and Renewable Energy; Department of Energy (DOE).

ACTION: Notice of Noncompetitive Financial Assistance Award.

SUMMARY: DOE, Office of Management and Resources, Conservation and Renewable Energy, through the Philadelphia Support Office, announces that, pursuant to the DOE Financial Assistance Rules 10 CFR 600.14(f), DOE intends to award a grant to the ASES. The anticipated overall objective is to provide a vehicle for exchanging information about advances in solar energy technologies, programs and concepts with both public and private sector technical researchers and energy officials.

SUPPLEMENTARY INFORMATION: The grant of $40,000 will partially fund the ASES' Annual National Solar Energy Conference. In this project, entitled "Application for Federal Assistance for Partial Funding of the American Solar Energy Society Solar 92 Conference," ASES will conduct its annual conference which will focus on the impact of solar technologies on the national and global environment.

The term of this grant shall be three (3) months from the effective date of award.

DOE knows of no other entity that is conducting or planning to conduct such an effort. This effort is suitable for noncompetitive financial assistance and is not eligible for financial assistance under a recent, current, or planned solicitation.

FOR FURTHER INFORMATION CONTACT: Christoper G. McGowan, Philadelphia Support Office, U. S. Department of Energy, Tenth Floor, 1421 Cherry Street, Philadelphia, Pennsylvania 19102-1492, (215) 597-3890.

Issued in Chicago, Illinois on May 27, 1992.

Timothy S. Crawford,

Assistant Manager for Administration.

[FR Doc. 92-13226 Filed 6-4-92; 8:45 am]

BILLING CODE 6450-01-M

[CE-Support Office Boston]

Financial Assistance Award; Intent to Award Grant to Solar Energy Industries Association

AGENCY: Conservation and Renewable Energy, Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: Pursuant to 10 CFR 600.7(b)(2), the Department of Energy, Chicago Operations, through the Boston Support Office intends to award a grant to The Solar Energy Industries Association. The grant will provide funding in the amount of $64,610 for a Photovoltaic Commercialization Program. The work proposed will support among other things, the development of market introduction strategies, organization and attendance at meetings, and liaison with joint venture activities being undertaken by DOE and by the International Fund for Renewable Energy and Energy Efficiency.

DOE knows of no other entity that is conducting or planning to conduct such an effort. This effort is suitable for noncompetitive financial assistance and would not be eligible for financial assistance under a recent, current, or planned solicitation.

The term of this grant shall be twelve (12) months from the effective date of award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Boston Office; Attn: Mr. Hugh Saussy, Jr.; One Congress Street, Boston, MA 02114-2021.

Issued in Chicago, Illinois on May 27, 1992.

Timothy S. Crawford,

Assistant Manager for Administration.

[FR Doc. 92-13227 Filed 6-4-92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER92-346-000, et al.]

Central Hudson Gas & Electric Corp. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Central Hudson Gas & Electric Corporation

[Docket No. ER92-346-000]

May 27, 1992.

Take notice that Central Hudson Gas and Electric Corporation (Central Hudson) on May 7, 1992, tendered for filing an amendment to its development of actual costs for 1990 related to substation service provided to Consolidated Edison Company of New York, Inc. (Con Edison) and Niagara Mohawk Power Corporation (Niagara Mohawk) in accordance with the provisions of its Rate Schedule FERC No. 43.

Central Hudson indicates that the actual cost for 1990 amounted to $261,196 and will be the basis on which estimated charges for 1991 will be billed.

Central Hudson requests waiver of the notice requirements set forth in 18 CFR 35.11 of the Regulations to permit charges to become effective January 1, 1991 as agreed by the parties.

Central Hudson states that a copy of its filing was served on Con Edison, Niagara Mohawk and the Sate of New York Public Service Commission.

Comment date: June 8, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. Oswego Hydro Partners L.P.

[Docket No. QF86-517-001]

May 28, 1992.

On May 22, 1992, Oswego Hydro Partners L.P., c/o American Energy Hydroelectric Corporation, 900 19th Street, NW., suite 600, Washington, DC 20006, submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The hydroelectric facility will be located in Oswego and Onondaga Counties, New York on the Oswego River. The Commission previously certified the facility as a qualifying small power production facility, *Long Lake Energy Corporation*, 35 FERC ¶ 62,097 (1986). The instant request for recertification is due to: (1) Change in ownership structure involving an electric utility, (2) decrease in maximum net electric power production capacity from 4.0 MW to 3.4 MW and, 3) inclusion of a 2,150-foot 34.4 kV transmission line that will interconnect the facility to Niagara Mohawk Power Corporation's electric system.

Comment date: July 6, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. Iowa Public Service Company

[Docket No. ER91-684-000]

May 29, 1992.

Take notice that on May 20, 1992, Iowa Public Service Company (IPS) tendered for filing a forth amendment to the filing of an executed Transmission Interconnection and Interchange Agreement between IPS and Nebraska Public Power District (NPPD).

IPS indicates that the Interconnection and Interchange Agreement reflects the establishment of a transmission interconnection between the two systems. NPPD will pay IPS a facilities charge based on transmission line investment. This fourth amendment provides Amendment No. 2 to the Agreement (signed by both parties) and a calculation of refund owed to NPPD.

IPS respectfully requests a waiver of the Commission's rules so that the Interconnection and Interchange Agreement may be approved retroactive to December 29, 1986.

IPS states that copies of this filing were served on NPPD and the Iowa Utilities Board.

Comment date: June 12, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. Pacific Gas and Electric Company

[Docket No. ER92-476-000]

May 29, 1992.

Take notice that on May 27, 1992, Pacific Gas and Electric Company (PG&E) tendered for filing an amendment to the agreement filed under FERC Docket No. ER92-476-000. This docket, initially filed on April 21, 1992, implements on an interim basis a new practice for flexible scheduling of the power output of Northern California Power Agency's and the City of Santa Clara's Collierville Powerhouse Units 1 and 2 based on an executed letter agreement dated July 31, 1991.

The amendment supplements the original agreement by:

(i) Extending the effective date and

(ii) Revising the data in Attachment 1 and Table 1 to reflect an increase in the Machine Capacity rating of the Collierville Hydroelectric Project.

No rate changes are involved in this filing.

Comment date: June 12, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. Iowa Public Sevice Company

[Docket No. ER92-564-000]

May 29, 1992.

Take notice that on May 20, 1992, Iowa Public Service Company (IPS) tendered for filing a reduction of the Transmission Service Fee. On February 18, 1992 FERC accepted for filing and designated Rate Schedule FERC No. 111 for the Transmission Service Agreement (Agreement) between Iowa Public Service Company (IPS) and Cedar Falls Utilities (CFU). This Agreement provides transmission service to CFU for its share of power and energy from the George Neal Generating Station Unit No. 4 to CFU's system. Section 2 of the Agreement provides that the transmission service fee shall be reviewed and adjusted annually, if necessary.

IPS respectfully requests a waiver of the Commission's rules so that the Transmission Service Fee may be approved retroactive to January 1, 1992.

IPS states that copies of this filing were served on Cedar Falls Utilities and the Iowa Utilities Board.

Comment date: June 12, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. Tampa Electric Company

[Docket No. ER92-319-000]

May 29, 1992.

Take notice that on May 19, 1992, Tampa Electric Company (Tampa Electric) tendered for filing an amendment to its prior submittal of an Agreement to Provide Qualifying Facility Transmission Service between Tampa Electric and Seminole Fertilizer Corporation (Seminole Fertilizer). The amendment concerns support for, and amendment of, a related interconnection agreement between Tampa Electric and Seminole Fertilizer.

Tampa Electric proposes an effective date for the Transmission Service Agreement of the earlier of October 1, 1992, or the in-service date of the power sale contract between Seminole Fertilizer and Florida Power Corporation.

Copies of the filing have been served on Seminole Fertilizer and the Florida Public Service Commission.

Comment date: June 12, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. Missouri Public Service, a Division of UtiliCorp United Inc.

[Docket No. ER92-562-000]

May 29, 1992.

Take notice that Missouri Public Service, a Division of UtiliCorp United Inc. (MPS) on May 19, 1992, tendered for filing an Amendment dated May 14, 1992 to the Transmission and Interconnection Agreement between MPS and Associated Electric Cooperative, Inc. (AEC) dated August 24, 1988 (the Agreement).

The filing states that the Amendment was entered into in order to add two new delivery points to the Agreement. No change in rates will occur as a result of the Amendment. MPS is requesting waiver of the Commission's notice requirements so that the Amendment can become effective on May 14, 1992, as the parties agreed.

Copies of the filing were served upon AEC and the Missouri Public Service Commission.

Comment date: June 12, 1992, in accordance with Standard Paragraph E at the end of this notice.

8. Madison Gas and Electric Company

[Docket No. ER92-244-000]

May 29, 1992.

Take notice that Madison Gas and Electric Company (MGE) on May 18, 1992, tendered for filing a revised Service Schedule A to the Interchange Agreement between itself and Wisconsin Electric Power Company (WEPCO). The submittal addresses certain concerns of the Commission's staff regarding compensation for Limited Term Power and Energy.

WEPCO and MGE respectfully requests an effective date of June 1, 1992.

Copies of the filing have been served on WEPCO and the Public Service Commision of Wisconsin.

Comment date: June 12, 1992, in accordance with Standard Paragraph at the end of this notice.

9. Duke Power Company

[Docket No. ER92-567-000]

May 29, 1992.

Take notice that on May 19, 1992, Duke Power Company (Duke) tendered for filing with the Commission a revised Supplement No. 5 to Supplement No. 24 to the Interchange Agreement between Duke and Carolina Power & Light Company (CP&L) dated June 1, 1961, as amended (Interchange Agreement). The revised Supplement No. 5 changes Duke's monthly transmission capacity rate under the Interchange Agreement from $1.1415 per kW per month to $1.1097 per kW per month. Duke has proposed an effective date of July 1, 1992, for the revised charge.

Copies of this filing were mailed to Carolina Power & Light Company, the North Carolina Utilities Commission, and the South Carolina Public Service Commission.

Comment date: June 12, 1992, in accordance with Standard Paragraph E at the end of this notice.

10. Consolidated Edison Company of New York, Inc.

[Docket No. ER92-581-000]

May 29, 1992.

Take notice that on May 20, 1992, Consolidated Edison Company of New York, Inc. (Con Edison), in response to a deficiency letter herein, tendered for filing additional information relative to an agreement to provide transmission service to New York State Electric & Gas Corporation (NYSEG).

Con Edison states that a copy of this filing has been served by mail upon NYSEG.

Comment date: June 12, 1992, in accordance with Standard Paragraph E at the end of this notice.

11. Western Resources, Inc.

[Docket No. ER92-573-000]

May 29, 1992.

Take notice that on May 26, 1992, Western Resources, Inc. (Western Resources), 818 Kansas Avenue, Topeka, Kansas, 66601, tendered for filing notice that due to the change of name of The Kansas Power and Light Company (KPL), Western Resources adopts, ratifies, and makes its own, in every respect all applicable rate schedules, and supplements thereto previously filed with the Federal Energy Regulatory Commission and the Federal Power Commission, its predecessor, by The Kansas Power and Light Company.

The notice of name change was filed as a result of the renaming of the Kansas Power and Light Company to Western Resources, Inc., by a vote of its stockholders on May 5, 1992.

Copies of the filing were served upon Western Resources' jurisdictional customers and the Kansas Corporation Commission.

Comment date: June 12, 1992, in accordance with Standard Paragraph E at the end of this notice.

12. Commonwealth Edison Company

[Docket No. ER92-563-000]

May 29, 1992.

Take notice that on May 19, 1992, Commonwealth Edison Company (Edison) tendered for filing Amendment No. 17, dated May 6, 1992, to the Interconnection Agreement, dated March 1, 1964, between Edison and Illinois Power (Illinois Power). Amendment No. 17 changes Edison's rates for coordination transactions between the parties, deletes the service schedule providing for the exchange of Maintenance Energy and adds a service schedule permitting Edison to sell Firm Power to Illinois.

Edison requests expedited consideration of the filing and an effective date for its rate schedule of June 1, 1992. Accordingly, the parties request waiver of the Commission's notice requirements to the extent necessary.

Copies of this filing were served upon the Illinois Commerce Commission and Illinois Power.

Comment date: June 12, 1992, in accordance with Standard Paragraph E at the end of this notice.

13. Louisville Gas and Electric Company

[Docket No. ER92-533-000]

May 29, 1992.

Take notice that Louisville Gas and Electric Company (LG&E), by letter dated May 26, 1992, tendered for filing an amendment to Rate Schedule T—Firm Transmission Service, originally filed on May 6, 1992.

The filing is being made to amend certain language to give service under Rate Schedule T the same priority as firm sales service to LG&E's Native Load Customers. As originally filed, service under Rate Schedule T was subordinate to firm sales service to LG&E's Native Load Customers.

LG&E has requested that the effective date of July 6, 1992 (per the originaly filing) remain unchanged. A copy of the filing was served upon the Kentucky Public Service Commission.

Comment date: June 12, 1992, in accordance with Standard Paragraph E at the end of this notice.

14. Wisconsin Public Service Corporation

[Docket No. ER92-577-000]

May 29, 1992.

Take notice that on May 27, 1992, Wisconsin Public Service Corporation (WSPC) tendered for filing a new Service Schedule H under its W-3 Tariff for Partial Requirements Load Pattern Service to Interconnection Customers.

The new schedule provides for limited term power and energy. Currently, only one customer (Consolidated Water Power Company) is served under the W–3 Tariff, and that customer has asked to have the new service available as soon as possible.

WPSC states that copies of this filing have been posted and have been served on Consolidated Water Power Company and the Public Service Commission of Wisconsin.

Comment date: June 12, 1992, in accordance with Standard Paragraph E at the end of this notice.

15. Iowa Public Service Company

[Docket No. ER91–256–000]

May 29, 1992.

Take notice that on May 26, 1992, Iowa Public Service Company (IPS) filed a supplement to its FERC filing of March 26, 1991. On February 8, 1991, IPS filed an executed Contract for Electric Service (Nonfirm Energy Service) and Interconnection Agreement between Iowa Public Service Company and the U.S. Department of Energy, Western Area Power Administration, Pick-Sloan Missouri Basin Program, Eastern Division, and on September 12, 1991, filed an amendment to the original filing. On November 1, 1991, IPS requested FERC to defer taking action pending the development of further cost support. By this supplement, IPS is now requesting FERC to proceed with taking action on Docket No. ER91–256–000.

Comment date: June 12, 1992, in accordance with Standard Paragraph E at the end of this notice.

16. Texas-New Mexico Power Company

[Docket No. ER92–565–000]

May 29, 1992.

Take notice that on May 19, 1992, Texas-New Mexico Power Company (TNP) tendered for filing a Notice of Cancellation of its Rate Schedule No. 12. TNP proposes an effective date of July 19, 1992.

TNP states that the reason for the cancellation is that the contract for the service provided for therein has expired by its terms and that TNP does not at present provide any service thereunder and does not intend to provide any such service in the future. Accordingly, the rate schedule serves no useful purpose.

Copies of the filing were served on the jurisdictional customer involved and the interested state commission.

Comment date: June 12, 1992, in accordance with Standard Paragraph E at the end of this notice.

17. Philadelphia Electric Company

[Docket No. ER92–412–000]

May 29, 1992.

Take notice that on May 20, 1992, Philadelphia Electric Company (PECo) filed on behalf of the parties to the Extra High Voltage Transmission Agreement (EHV Agreement) revised Schedules to the Transmission Enhancement Facilities (TEF) Agreement which is filed as a supplement to the EHV Agreement. The parties to both agreements are: Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power & Light Company, Philadelphia Electric Company, Potomac Electric Power Company, Public Service Electric and Gas Company, and UGI Corporation.

The revised Schedules are being substituted for similar Schedules previously tendered for filing in this docket. They contain several changes introduced to satisfy objections raised by the Commission's staff. An effective date of June 1, 1992 has been requested for these revisions concurrent with the in-service date for the new facilities.

Comment date: June 12, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–13153 Filed 6–4–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP92–502–000, et al.]

Florida Gas Transmission Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Florida Gas Transmission Company

[Docket No. CP92–502–000]

May 27, 1992.

Take notice that on May 15, 1992, Florida Gas Transmission Company (Florida Gas), 1400 Smith Street, Houston, Texas 77002, filed an application in Docket No. CP92–502–000, pursuant to sections 7(b) and 7(c) of the Natural Gas Act for authority to amend its existing certificate under which it provides service to Peoples Gas System, Inc. (Peoples) under Rate Schedules G and FTS–1 and to abandon service it renders to Palm Beach County Utilities Corporation (Palm Beach) under Rate Schedules G and FTS–1, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Florida Gas seeks to revise the existing firm sales agreement under Rate Schedule G and the existing firm transportation agreement under Rate Schedule FTS–1 it has with Peoples by increasing Peoples' firm sales and firm transportation entitlements by an amount equal to Palm Beach's firm sales and firm transportation entitlements. In addition, Florida Gas is adding a new Palm Beach division that consists of the Palm Beach Gardens delivery point. Further, Florida Gas requests a waiver of its tariff with respect to the first-come, first-served policy so as to permit Peoples to retain its existing priority in Florida Gas/ firm transportation queue.

Comment date: June 17, 1992, in accordance with Standard Paragraph F at the end of this notice.

2. Arkla Energy Resources, a division of Arkla, Inc. and Arkla Energy Resources Company

[Docket No. CP92–504–000]

May 27, 1992.

Take notice that on May 20, 1992, Arkla Energy Resources, a division of Arkla, Inc. (Division) and Arkla Energy Resources Company (AERCo), both located at 525 Milam Street, P.O. Box 21734, Shreveport, Louisiana 71181, jointly referred to as Applicants, filed in Docket No. CP92–504–000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act for an order authorizing AERCo (1) to acquire and operate Division's interstate pipeline facilities, and (2) to transport and sell natural gas for resale in interstate commerce, and

authorizing Division to abandon the facilities and services to be acquired and performed, respectively, by AERCo, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants state that Division is transferring its interstate pipeline facilities and contracts to AERCo. It is indicated that upon such transfers, AERCo, newly-formed company, would become a "natural gas company" under the Natural Gas Act and a successor in interest to Division's interstate pipeline business.

AERCo also seeks authorization to make jurisdictional sales for resale of natural gas Arkansas Louisiana Gas Company (ALG) pursuant to Rate Schedule CD, as modified. It is stated that no changes in the existing certificated services or service levels currently performed by Division for ALG are proposed. It is also indicated that no facility modifications are required. Applicants further state that the proposed corporate realignment would place the pipeline's pipelines operations and regulation on a similar basis to other interstate pipelines, and that it would have no adverse effect on Division's jurisdictional ratepayers.

Comment date: June 17, 1992, in accordance with Standard Paragraph F at the end of this notice.

3. ANR Pipeline Company

[Docket No. CP92-514-000]

May 29, 1992.

Take notice that on May 26, 1992, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP92-514-000 an application pursuant to Section 7(b) of the Natural Gas Act for an order granting permission and approval for the abandonment of a transportation service provided to Natural Gas Pipeline Company of America (Natural) under Rate Schedule X-130 of Original Volume No. 2 of ANR's FERC Gas Tariff, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR states that it is authorized to provide a firm transportation of up to 40,000 Mcf of natural gas to Natural under ANR's Rates Schedule X-130. ANR also states that as a result of negotiations between ANR and Natural they have mutually agreed to terminate Rate Schedule X-130 effective October 31, 1992 and request that the order be effective on that date. ANR further states upon grant and acceptance of the abandonment, it will file, pursuant to Section 154 of the Commission's Regulations, to cancel its Rate Schedule X-130 to its FERC Gas Tariff, Original Volume No. 2. ANR also states that no facilities are proposed to be abandoned.

Comment date: June 19, 1992, in accordance with Standard Paragraph F at the end of this notice.

4. Columbia Gas Transmission Corporation

[Docket No. CP92-513-000]

May 29, 1992.

Take notice that on May 22, 1992, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP92-513-000 an application pursuant to section 7(c) of the Natural Gas Act for authorization to continue the operation of the Ripley Storage Field, Jackson County, West Virginia, within its current natural boundaries, originally authorized in Docket No. G-2061 (12 FPC 891), all as more fully set forth in the application on file with the Commission and open to public inspection.

Columbia proposes to expand the boundaries of the existing Ripley Storage Field to the extent necessary to maintain its integrity as a natural gas storage facility due to the migration of stored gas beyond the original, estimated boundaries of the field. Columbia states that a map showing the reservoir and protective boundaries of the storage field is included in Exhibit H to the application. Columbia further states that the purpose of the application is to assure Columbia's ability to condemn exclusive gas storage easements under section 7(h) of the Natural Gas Act, as amended. Columbia explains that the filing results from a Court's holding in *Columbia Gas Transmission Corporation* v. *An Exclusive Gas Storage Easement, et al.*, 578 F. Supp. 930 (N.D. Ohio 1983), *affirmed*, 776 F.2d 125 (6th Cir. 1985) that Columbia did not have the right of eminent domain for a certain tract of land in one of its storage fields because it was located outside the geographic area designated on the exhibit maps contained in the application in which Columbia obtained certificate authorization for the storage field.

Comment date: June 19, 1992, in accordance with Standard Paragraph F at the end of the notice.

5. Tennessee Gas Pipeline Company

[Docket NO. CP91-1618-002]

May 29, 1992.

Take notice that on May 19, 1992, Tennessee Gas Pipeline Company (Tennessee), 1010 Milam, Houston, Texas 77252, filed a petition to vacate that portion of a Commission order issued on December 27, 1991, in Docket No. CP91-1618-000 which granted Tennessee certificate authorization for the replacement of a portion of its Holyoke Delivery Line (Holyoke segment), all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Tennessee states that the Commission's order issued on December 27, 1991, in Docket No. CP91-1618-000 authorized Tennessee, among other things, to replace approximately 2.28 miles of 4.5-inch pipeline on its Holyoke Delivery Line in Hampshire and Hampden Counties, Massachusetts with 8-inch pipeline in order to ensure the continued safety and integrity of Tennessee's system. Tennessee has determined that the replacement should be delayed due to the infrequent use of this particular segment of pipeline, it is indicated. Tennessee states that the Holyoke segment has only been utilized as back-up service four times since 1968. Tennessee states that it has filed for permission and approval to abandon, in place, the Holyoke segment pursuant to its blanket certificate. Therefore, Tennessee requests that the portion of the December 27, 1991, order pertaining to the Holyoke segment be vacated.

Comment date: June 19, 1992, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

6. Mercado Gas Services, Inc.

[Docket No. CI92-51-000]

May 29, 1992.

Take notice that on May 18, 1992, Mercado Gas Services, Inc. (Mercado) of 400 West 15th Street, Austin, Texas 78701 filed an application under sections 4 and 7 of the Natural Gas Act (NGA) for a unlimited-term blanket certificate with pre-granted abandonment. Mercado requests authority to make sales for resale in interstate commerce, without supply or marketing restrictions, of all natural gas subject to the jurisdiction of the Commission under the NGA. Mercado requests that its blanket certificate be consistent with certificates granted to other marketing affiliates. Mercado's application is on file with the Commission and open for public inspection.

Comment date: June 17, 1992, in accordance with Standard Paragraph J at the end of this notice.

7. Viking Gas Transmission Company

[Docket No. CP92-509-000]

May 29, 1992.

Take notice that on May 21, 1992, Viking Gas Transmission Company (Viking), 1010 Milam Street, Houston, Texas 77002, filed in Docket No. CP92-509-000 a request pursuant to Section 157.205 of the Commission's Regulations to expand an existing delivery point in Wadena, Minnesota (Wadena) to increase capacity for interruptible transportation services that Viking currently provides to Northern Minnesota Utilities, a Division of UtiliCorp United Inc. (NMU) under Viking's blanket certificate issued in Docket No CP88-679-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection .

Viking proposes to expand the meter station at Wadena to increase its capacity to 20,000 Mcf of natural gas per day by replacing the existing measuring equipment with a 6-inch auto-adjust turbine meter in the existing right-of-way. Viking states that the existing facilities would be expanded to accommodate increased natural gas deliveries to NMU under Viking's Rate Schedule IT-2. NMU has requested deliveries of up to 20,000 Mcf of natural gas per day at Wadena and has agreed to reimburse Viking for the cost of the expanded facilities which are estimated to cost $259,000, it is stated. Viking states that the total quantities to be delivered to NMU through the new expanded facilities would not exceed presently authorized quantities and the changes proposed are not prohibited by Viking's tariff. Viking has sufficient capacity in its system to accomplish the increased delivery of natural gas to Wadena without detriment or disadvantage to any of Viking's other customers, it is stated.

Comment date: July 13, 1992, in accordance with Standard Paragraph G at the end of this notice.

8. Transcontinental Gas Pipe Line Corporation

[Docket No. CP92-510-000]

May 29, 1992.

Take notice that on May 21, 1992, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP92-510-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the acquisition and operation of an electric motor-driven compressor at Transco's Compressor Station No. 100 in Chilton County, Alabama, referred to as a Motor Pipeline Compressor (MOPICO), from TEVCO Compressor Company (TCC), and to operate two of Transco's existing steam-driven compressors, also at Station No. 100, on a standby basis, all as more fully set forth in the application on file with the Commission and open to public inspection.

Transco states that Transco Energy Ventures Company (TEVCO) and other companies (TEVCO group) are involved in developing and commercializing a low cost, high efficiency, electric compressor, referred to as the MOPICO. It is stated that Transco agreed to host the first prototype MOPICO at its Compressor Station No. 100 in Chilton County, Alabama, prior to introduction of the MOPICO to market. It is stated that on February 23, 1990, 50 FERC ¶61,220, in Docket No. CP89-1808-000, TEVCO was granted exemption from the certificate requirements of section 7(c) of the Natural Gas Act for the installation and testing of the prototype unit at Station No. 100 as long as the unit was utilized as replacement capacity only and that at no time during the testing of the unit would Station No. 100 exceed the total horsepower capacity for which it was certificated.

It is stated that subsequent to the granting of exemption, Transco and TEVCO entered into an Equipment Lease Agreement wherein Transco leased from TEVCO the prototype unit for installation and operation at Station No. 100. It is maintained that such lease is still in effect and includes an option for Transco to purchase the unit for $4,000,000. It is also stated that subsequent to the execution of the lease, TEVCO, with the consent of Transco, assigned all of its interest in such agreement to TCC, provide that in the event TCC does not perform any of its obligations under the agreement TEVCO would perform them.

Transco states that is has decided to exercise its option to purchase the prototype MOPICO unit, in place, at its Station No. 100. It is stated that Transco, TEVCO and TCC have executed a Lease/Purchase Agreement which provides that Transco will pay TEVCO/TCC $4,000,000 for the unit; that the unit will be disassembled and inspected on-site by TEVCO and TEVCO will, as its own expense, under the existing parts and labor warranty, modify the unit by incorporating improvements dictated by undue operating wear of the unit and inspection of the unit; and that TEVCO will rewheel the centrifugal compressor with high efficiency wheels designed for peak performance at the flow and pressure ratio conditons to be projected in writing by Transco.

Transco requests approval of the herein acquisition by September 1, 1992, because under Transco's currently pending general rate case in Docket No. RP92-137-000, all facilities to be included in rate base must be owned by Transco and in service by September 1, 1992.

It is further stated that upon purchase of the MOPICO unit and inclusion of it as one of Transco's regular units, Transco plans to remove from regular service two steam-driven compressors at Station No. 100 that were authorized in Docket Nos. G-704 and G-1277 and placed into service during June 1951. It is stated that these units were part of the original Transco system and now require extensive renovation. Transco states that it plans to leave the two units in place and operate them solely on a standby basis, only when other compression at Station No. 100 is not capable of being utilized for any reason and when it is necessary to utilize one or both of the steam units to achieve the necessary throughput at Station No. 100. Transco requests that authorization of the operation of the two steam-driven compressors on a standby basis be contingent upon Transco receiving acceptable authority to acquire and operate the MOPICO unit.

In addition, Transco states that at no time will Station No. 100 exceed the total horsepower capacity for which it is certificated.

Comment date: June 19, 1992, in accordance with Standard Paragraph F at the end of this notice.

9. Williams Natural Gas Company

[Docket No. CP92-512-000]

May 29, 1992.

Take notice that on May 22, 1992, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP92-512-000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon two compressor units located in Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

WNG proposes to abandon a 230 horsepower compressor unit at the Hughey compressor station in Gray County, Texas, and a 230 horsepower compressor unit at the White Deer compressor station in Carson County, Texas. It is stated that both units were installed in 1937 and that both are now obsolete and not adaptable to automation or unmanned operation. It is asserted that the compressor units

remaining at both stations will continue to provide the same level of service and that no customers will lose service as a result of the proposed abandonment. The cost of the proposed abandonment is estimated at $15,540, and the salvage value for both units is estimated at $2,700.

Comment date: June 19, 1992, in accordance with Standard Paragraph F at the end of this notice.

10. Michigan Consolidated Gas Company

[Docket No. CP92-406-001]

May 29, 1992.

Take notice that on May 22, 1992, Michigan Consolidated Gas Company (MichCon), 501 Griswald Street, Detroit, Michigan, 48226, pursuant to sections 3 and 7(c) of the Natural Gas Act and Parts 157 and 385 of the Commission's Regulations thereunder, filed herein an amendment (the "Amendment") to its application filed on March 11, 1992, (the "Application"). The Amendment removes a restriction that MichCon proposed in the Application with respect to the transportation of gas through Belle River-Bickford Pipeline (the "Pipeline"), all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

In the Application, MichCon asked that the Commission remove the existing restriction on Michcon's section 3 authorization with respect to the use of the Pipeline in foreign and interstate commerce.[1] That restriction provides that MichCon may only use the Pipeline for:

* * * * the transportation of gas in foreign commerce for the purposes of Union's system supply or for the delayed exchange of Union Gas Limited's and MichCon's system supplies.[2]

MichCon states in the Amendment that although it would have preferred the deletion of the entire restriction, in an effort to avoid entanglement with the Commission's ongoing consideration of the proposals of Empire State Pipeline and others to serve the western New York State market,[3] and to expedite action on the Application, MichCon proposed in the Application to retain a limited restriction on the use of the Pipeline in interstate commerce. Specifically, MichCon proposed that it not be authorized to transport any natural gas through the Pipeline into Canada that would, in turn, be imported from Canada into New York State (the "New York State Limitation").

MichCon further states in the Amendment that since the Application was filed, several petitioners have protested the New York State Limitation as inconsistent with the Commission's open-access regulations. Accordingly, MichCon is amending the Application to delete all references to the New York State Limitation.

Comment date: June 19, 1992, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wising to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 92-13152 Filed 6-4-92; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 10876-001-Texas]

Sam Rayburn Municipal Power Agency, Surrender of Preliminary Permit

May 29, 1992.

Take notice that Sam Rayburn Municipal Power Agency, permittee, for the Lake Livingston Project located on the Trinity River in Polk County, Texas, has requested that its preliminary permit be terminated. The preliminary permit was issued on May 16, 1990, and would have expired on April 30, 1993. The permittee states that analysis of the project did not indicate feasibility for development.

The permittee filed the request on May 4, 1992, and the preliminary permit for Project No. 10876 shall remain in effect through the thirtieth day after issuance of this notice unless that day is

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[1] *Michigan Colsolidated Gas Company*, 48 FERC ¶ 61,300 (1989); *reh'g denied*, 50 FERC, FERC ¶ 61,010 (1990)

[2] 48 FERC ¶ 61,300 at page 61,959 (1989)

[3] *Empire State Pipeline et al.*, Docket Nos. CP90-316-000 et al.

a Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 92-13151 Filed 6-4-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-6-63-000 and TM92-4-63-000]

Carnegie Natural Gas Co.; Proposed Changes in FERC Gas Tariff

June 1, 1992.

Take notice that on May 27, 1992, Carnegie Natural Gas Company ("Carnegie") tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Thirty-First Revised Sheet No. 8
Thirty-First Revised Sheet No. 9

Carnegie states that pursuant to Sections 23 and 26 of the General Terms and Conditions of its FERC Gas Tariff, it is filing a combined Out-of-Cycle Purchased Gas Adjustment ("PGA") and Transportation Cost Adjustment ("TCA") to reflect updated projections affecting the average commodity cost of purchased gas to be incurred by Carnegie on and after June 1, 1992. Carnegie states that the primary purpose of its filing is to accurately state the average commodity cost of gas on Carnegie's tariff sheets so that the negotiated sales rates agreed upon between Carnegie and its customers for interruptible sales service on and after June 1, 1992, will be in compliance with the rate conditions imposed by the Commission in issuing the SEGSS certificate and footnote 2 of Revised Tariff Sheet No. 9.

The revised rates are proposed to become effective June 1, 1992, and reflect the following changes from Carnegie's last fully-supported PGA filing in Docket No. TQ92-5-63-000: a $0.2040 per Dth increase in the commodity component of its CDS and LVWS rate schedules an a $.2040 increase in both the maximum and minimum commodity rates under Rate Schedule SEGSS. The revised tariff sheets also reflect an increase in the TCA charge of $0.0184 per dth, from $0.1846 per dth to $0.2030 per dth, as measured against Carnegie's last TCA filed on May 1, 1992, in Docket No. TM92-3-63-000.

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to intervene or protest said filing should file an intervention and/or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR sections 385.214 and 385.211. All such pleadings should be filed on or before June 8, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-13154 Filed 6-4-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-176-000]

Colorado Interstate Gas Co.; Tariff Filing

June 1, 1992.

Take Notice that on May 26, 1992, Colorado Interstate Gas Company ("CIG") tendered for filing the following tariff sheets in its Original Volume No. 3, with a proposed effective date of July 1, 1992.

Second Revised Sheet No. 60
Original Sheet No. 60A
Original Sheet No. 60B

CIG states that the purpose of this filing is to add a new section 9 to its Rate Schedule IS-1 governing the transfer of ownership of storage gas by Shippers. This new section 9 allows the transfer of ownership of gas in place held by interruptible storage shippers on CIG's system.

CIG states that copies of its filing were served on all holders of Volume No. 3 of CIG's FERC Gas Tariff and appropriate state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with § 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 8, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-13158 Filed 6-4-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-3-32-000]

Colorado Interstate Gas Co.; Filing

June 1, 1992.

Take notice that on May 28, 1992 Colorado Interstate Gas Company ("CIG") submitted for filing an original and five copies of Fifth Revised Sheet Nos. 7.1 through 8.2. CIG requests that these proposed tariff sheets be made effective on July 1, 1992.

The instant purchased gas adjustment ("PGA") filing is made pursuant to § 154.308 of the Commission's Regulations implementing Order 483, *et seq.* Fifth Revised Sheet Nos. 7.1 through 8.2 reflect a 0.02 cent/Mcf increase in the commodity rate for the G-1, P-1, SG-1, H-1, F-1 and PS-1 Rate Schedules. There is no change in the Demand-1 or Demand-2 rates because CIG does not currently incur "as billed" charges from its suppliers.

CIG states that copies of this filing are being served on all jurisdictional customers and interested state commissions, and are otherwise available for public inspection at CIG's offices in Colorado Springs, Colorado.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 8, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available

for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92–13155 Filed 6–4–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ92–2–5–004]

Midwestern Gas Transmission Co.; Rate Filing June 1, 1992.

Take notice that on May 28, 1992, Midwestern Gas Transmission Company ("Midwestern"), tendered for filing the following revised tariff sheets to First Revised Volume No. 1 of its FERC Gas Tariff:

Revised tariff sheet	Effective date
Second substitute sixth revised twenty-seventh revised sheet No. 5.	Jan. 1, 1992.
Second substitute sixth revised twenty-second revised sheet No. 6.	Do.
Third substitute twenty-eight revised sheet No. 5.	Do.
Second substitute twenty-ninth revised sheet No. 5.	Do.
Second substitute thirtieth revised sheet No. 5.	Feb. 1, 1992.
Substitute first revised thirtieth revised sheet No. 5.	Mar. 1, 1992.
Second substitute thirty-first revised sheet No. 5.	Apr. 1, 1992.
Substitute thirty-second revised sheet No. 5.	Do.
Substitute thirty-third revised sheet No. 5.	May 1, 1992.

Midwestern states that the revised sheet tracks Tennessee Gas Pipeline Company's April 14, 1992 compliance filing in Docket No. RP91–203. Midwestern further states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before June 8, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–13156 Filed 6–4–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP91–224–003 and RP92–1–005]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

June 1, 1992.

Take notice that Northern Natural Gas Company (Northern) on May 21, 1992, tendered for filing to become part of Northern's FERC Gas Tariff Third Revised Volume 1, the following tariff sheets, proposed to be effective October 25, 1991:

Sixth Revised Sheet No. 52C.9a
Sixth Revised Sheet No. 52F.11
Original Sheet No. 52F.11a
Tenth Revised Sheet No. 59
Eighth Revised Sheet No. 59C

Northern states that such tariff sheets are being submitted in compliance with the Commission's Order issued May 6, 1992, in Docket Nos. RP91–224–000 et al. and RP92–1–000 et al. to revise the tariff language surrounding temporary supply interruption and other issues.

Northern further states that copies of the filing have been mailed to each of its customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before June 8, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–13157 Filed 6–4–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP91–1253–002]

WestGas InterState, Inc.; Compliance Filing

June 1, 1992.

Take notice that on May 22, 1992 WestGas InterState, Inc. (WGI) tendered for filing its FERC Gas Tariff, Original Volume No. 1, to be effective June 1, 1992.

WGI states that the tariff sheets referenced above are being filed to comply with the Commission's Order Issuing Certificates, dated April 7, 1992. Pursuant to that Order WGI has made certain changes to the Pro Forma tariff sheets filed in its Certificate Application filed with the Commission on February 14, 1991. WGI requested waiver of any and all Commission regulations that would prevent the tariffs from becoming effective on June 1, 1992.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washigton, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before June 8, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–13159 Filed 6–4–92; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4140–3]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATE: Comments must be submitted on or before July 6, 1992.

For further information or to obtain a copy of this ICR contact Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Reporting and Recordkeeping Requirements for the New Source Performance Standards (NSPS) subpart QQ for the Graphic Arts Industry—Publication Rotogravure Printing (ICR No. 0657.04; OMB No. 2060–0105).

Abstract: This ICR is for an extension of an existing information collection in support of the Clean Air Act, as described under the general NSPS at 40 CFR 60.7–60.8 and the specific NSPS, for volatile organic compound (VOC)

emissions from the Graphic Arts Industry, at 40 CFR 60.430–60.435. The information will be used by the EPA to direct monitoring, inspection, and enforcement efforts, thereby ensuring compliance with the NSPS.

Owners and operators of affected facilities must provide EPA with: (1) Notification of construction, reconstruction, or modification; (2) anticipated and actual dates of facility startup; (3) initial performance test data and results; and (4) notification of any physical or operational change to an existing facility which could increase the VOC emission rate.

All affected facilities must maintain records on the facility operation that document: (1) The occurrence and duration of any start-ups, shutdowns, and malfunctions; (2) the amount of volatile solvent used, the amount recovered, and the percentage of volatile solvent emitted over each performance period (4 weeks or one month); and (3) the initial performance test results.

Presently there are 165 facilities subject to the regulation with an estimated growth of 15 facilities per year over the next three years. All subject facilities must maintain records related to compliance for two years.

Burden Statement: Public reporting burden for facilities subject to this collection of information is estimated to average 81 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining data, and completing and reviewing the collection of information. Public recordkeeping burden is estimated to average 63 hours annually.

Respondents: Owners or operators of subject rotogravure printing facilities which commenced construction, reconstruction, or modification after October 28, 1980.

Estimated Number of Respondents: 15 reporters, 188 recordkeepers.

Estimated Number of Responses Per Respondent: 1.

Estimated Total Annual Burden on Respondents: 12,933 hours.

Frequency of Collection: One-time notifications for new facilities; occasional reporting, as appropriate, for existing facilities.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM–223Y), 401 M Street SW., Washington, DC 20460

and

Troy Hillier, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, DC 20503.

Dated: June 1, 1992.

Paul Lapsley,

Regulatory Management Division.

[FR Doc. 92–13210 Filed 6–4–92; 8:45 am]

BILLING CODE 6560–50–M

[AMS–FRL–4139–6]

Regulation of Fuels and Fuel Additives: Standards for Reformulated Gasoline

AGENCY: Enviromental Protection Agency (EPA).

ACTION: Notice of application for extension of the Reformulated Gasoline Program to the District of Columbia.

SUMMARY: This notice publishes the application by the Major of the District of Columbia to have the prohibition set forth in section 211(k)(5) of the Clean Air Act, as amended (the Act), applied to the District of Columbia portion of the Washington ozone nonattainment area. Under section 211(k)(6) the Administrator of EPA shall apply the prohibition against the sale of gasoline which has not been reformulated to be less polluting in an ozone nonattainment area upon the application of the governor of the state in which the nonattainment area is located. The District of Columbia would be treated as a "State" for the purposes of section 211(k)(6). See section 302(d) of the Act.

DATES: The effective date of the prohibition described herein is January 1, 1995 (see the Supplementary Information section of today's notice for a discussion of the possible delay of this date.

ADDRESSES: Materials relevant to this Notice are contained in Public Document No. A–91–02. This docket is located in Room M/1500, Waterside Mall (ground floor), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The docket may be inspected from 8:30 a.m. until 12 noon and from 1:30 p.m. until 3 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Joanne I. Goldhand, U.S. EPA (SDSB–12), Motor Vehicle Emission Laboratory, 2565 Plymouth Road, Ann Arbor, MI 48105, Telephone: (313) 668–4504.

SUPPLEMENTARY INFORMATION:

I. Background

As part of the Clean Air Act Amendments of 1990, Congress added a new subsection (k) to section 211 of the Clean Air Act. Subsection (k) prohibits the sale of gasoline that EPA has not certified as reformulated ("conventional gasoline") in the nine worst ozone nonattainment areas beginning January 1, 1995. To be certified as reformulated a gasoline must comply with the following formula requirements: Oxygen content of at least 2.0 percent by weight; benzene content of no more than 1.0 percent by volume; and no heavy metals (with a possible waiver for metals other than lead). The gasoline must also achieve toxic and volatile organic compound emissions reductions equal to or exceeding the more stringent of a specified formula fuel or a performance standard.

Section 211(k)(10)(D) defines the areas covered by the reformulated gasoline program as the nine ozone nonattainment areas having a 1980 population in excess of 250,000 and having the highest ozone design values during the period 1987 through 1989. Applying those criteria, EPA has determined the nine covered areas to be the metropolitan areas including Los Angeles, Houston, New York city, Baltimore, Chicago, San Diego, Philadelphia, Hartford and Milwaukee. Under section 211(k)(10)(D), any area reclassified as a severe ozone nonattainment area under section 181(b) is also to be included in the reformulated gasoline program.

Any other ozone nonattanment area may be included in the program at the request of the governor of the state in which the area is located. Section 211(k)(6)(A) provides that upon the application of a governor, EPA shall apply the prohibition against selling conventional gasoline in any area in the governor's state which has been classified under subpart 2 of part D of title I of the Act as a Marginal, Moderate, Serious or Severe ozone nonattainment area.[1] The Act defines "State" to include the District of Columbia (section 302(d)). While the District does not have a governor, the highest executive branch official in the District of Columbia government is the Mayor. Subparagraph 211(k)(6)(A) further provides that EPA the Administrator is to apply the prohibition as of the date he "deems appropriate, not later than January 1, 1995, or 1 year after such application is received, whichever is later." In some cases the effective date may be extended for such an area as provided in section

[1] EPA recently promulgated such designations pursuant to Section 107(d)(4) of the Act (56 FR 56694; November 6, 1991).

211(k)(6)(B) based on a determination by EPA that there is "insufficient domestic capacity to produce" reformulated gasoline. Finally, EPA is to publish a governor's application in the Federal Register. EPA has received and published applications from the governors of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island and Virginia.

EPA has used the regulatory negotiation process in developing the requirements for reformulated gasoline. A notice of proposed rulemaking was published July 9, 1991 (56 FR 31176). Since that time the regulatory negotiation advisory committee reached consensus on an outline for the reformulated gasoline program. A supplemental notice of proposed rulemaking published on April 16, 1992 (57 FR 13416). This supplemental notice describes the certification program for reformulated gasoline, the credits program for exceeding certain requirements and the enforcement program, among other elements.

II. The Mayor's Request

EPA received an application from the Hon. Sharon Pratt Kelly, Mayor of the District of Columbia, for the District of Columbia portion of the Washington ozone nonattainment area to be included in the reformulated gasoline program. Her application is set out in full below.

[District of Columbia letterhead]

February 14, 1992.

The Honorable William Reilly,
Administrator, United States Environmental Protection Agency, West Tower Waterside Mall, 401 M Street SW., Washington, DC 20460

Dear Administrator Reilly: Pursuant to the requirements of Section 211 (k)(6) of the Clean Air Act, I request that, beginning January 1, 1995, the prohibition applying to the sale of conventional gasoline be extended to include the District of Columbia. I consider the sale of reformulated gasoline to be a major step towards the attainment of healthful air quality in the District and the surrounding Maryland and Virginia jurisdictions included in the Washington nonattainment area, an area currently classified as a serious ozone nonattainment area under federal Clean Air Act provisions.

I have appointed Ms. Ferial S. Bishop, of the Department of Consumer and Regulatory Affairs to serve as my contact in this matter. Ms. Bishop can be contacted at the following address: Ferial S. Bishop, Administrator, Environmental Regulation Administration, D.C. Department of Consumer and Regulatory Affairs, 2100 Martin Luther King, Jr., Avenue, SE., Suite 203, Washington, DC 20020–5732, Telephone: 202–404–1136, Fax: 202–404–1141.

We look forward to your expeditious approval of this request.

Sincerely,

s/Sharon Pratt Kelly,

Mayor.

cc: The Honorable Douglas Wilder
The Honorable William Donald Schaefer
Mr. Edwin Erickson—EPA Region III
Mr. Richard Rykowski—EPA Ann Arbor
Mr. Robert Perciasepe, Chairman, Northeast Ozone Transport Commission

III. Action

Pursuant to the mayor's letter and the provisions of section 211(k)(6), the prohibitions of subsection 211(k)(5) will be applied to the entire District of Columbia portion of the Washington ozone nonattainment area beginning January 1, 1995 (unless delayed, as provided above).[2] The application of the prohibitions to this area cannot take effect any earlier than January 1, 1995 under section 211(k)(5) and cannot take effect any later than January 1, 1995, under section 211(k)(6)(A), unless the Administrator extends the effective date by rule under section 211(k)(6)(B).

Dated: May 26, 1992.

William K. Reilly,

Administrator.

[FR Doc. 92–13095 Filed 6–4–92; 8:45am]

BILLING CODE 6560–50–M

[ER–FRL–4139–9]

Environmental Impact Statements Notice of Availability;

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 or (202) 260–5075.

Availability of Environmental Impact Statements Filed May 22, 1992 Through May 29, 1992 Pursuant to 40 CFR 1506.9

EIS No. 920196, Final Supplement, COE, NY, Atlantic Coast of New York City from Rockaway Inlet to Norton Point Beach Erosion and Storm Damage Reduction Plan, Updated Information, Implementation, Brighton Beach and Coney Island, Borough of Brooklyn, Kings County, NY, Due: July 06, 1992, Contact: Peter Weppler (212) 264–4663.

EIS No. 920197, FINAL EIS, BLM, AK, A–J Mine Reopening Project, Construction and Operation, Issuance of Right-of-Way Permit for Permanent Disposal of Tailings on Federal Lands in Sheep Creek Valley, Section 10 and 404 Permits, and NPDES Permit, City and Borough of Juneau, AK, Due: July 06, 1992, Contact: David Dorris (907) 272–2636.

EIS No. 920198, DRAFT EIS, AFS, MT, Stillwater Valley Platinum-Palladium Mining and Milling Project, Amendment to Plan of Operations and Approval of Permit, Stillwater River Valley, Custer National Forest, Stillwater County, MT, Due: July 20, 1992, Contact: Grey Visconty (406) 444–2074.

EIS No. 920199, Draft Supplement, USA, MA, NJ, AZ, Fort Huachuca, Fort Devens and Fort Monmouth Base Realignment, Transfer of Missions and Functions, Updated Information, Cochise County, AZ; Worcester and Middlesex Counties, MA and Monmouth County, NJ, Due: July 20, 1992, Contact: Alex Watt (213) 894–5068.

EIS No. 920200, Draft EIS, AFS, WA, Easton Ridge Timber Sale and Road Construction, Implementation, Wenatchee National Forest, Cle Elum Ranger District, Kittitas County, WA, Due: July 20, 1992, Contact: Tim Foss (509) 674–4411.

EIS No. 920201, Draft EIS, AFS, WA, County Timber Sale and Road Construction, Implementation, South Fork and Middle Fork, Little Naches River, Wenatchee National Forest, Naches Ranger District, Yakima and Kittitas Counties, WA, Due: July 20, 1992, Contact: Don Rotell (509) 653–2205.

EIS No. 920202, Final EIS, DOT, Commercial Reentry Vehicles Launched into and from Space, Licensing, Due: July 06, 1992, Contact: Norman C. Bowles (202) 366–2929.

EIS No. 920203, Draft Supplement, DOE, CA, Petroleum Production at Maximum Efficient Rate, Naval Petroleum Reserve No. 1 (Elk Hills) Continued Operation, Updated Information, Kern County, CA Kern County, CA, Due: July 31, 1992, Contact: James C. Killen (805) 763–6038.

Dated: June 2, 1992.

Marshall Cain,

Senior Legal Advisor, Office of Federal Activities.

[FR Doc. 92–3208 Filed 6–4–92; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–4140–1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared May 18, 1992 through May 22, 1992 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section

[2] The Washington ozone nonattainment area includes the entire District of Columbia. See 56 FR 56738 (November 6, 1991).

102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1992 (57 FR 12499).

Draft EISs

ERP No. D–AFS–J65190–WY Rating EC1, Union Pass Road Relocation Project, connecting Union Pass Road and Green River Lakes Road, Implementation, Bridger-Teton National Forest, Pinedale Ranger District, Fremont and Sublette Counties, WY.

Summary

EPA expressed environmental concerns regarding potential conflicts between recreation accommodated by the roadway upgrade and other forest activites such as grazing.

ERP No. D–BLM–K67014–AZ Rating EO2, Sanchez Open Pit Heap Leach Copper Mine Project, Construction and Operation, Permits Approval, Gila Mountain, Graham County, AZ.

Summary

EPA expressed environmental objections regarding potential project impacts to air quality, specifically that the project may cause or contribute to violations of the Federal air quality standards for particulates smaller than 10 microns (PM10). EPA requested that the FEIS contain more information on air and water quality and biological resources as well as facility design, monitoring and reclamation efforts.

ERP No. D–FRC–L05201–ID Rating EO2, Shelley Hydroelectric Project (FERC No. 5090) on the Snake River, Construction License, City of Idaho Falls, Bingham County, ID.

Summary

EPA expressed objection to the project based on possible water temperature increases and water quality effects on cold water biota. EPA requested additional information on possible violations of state water quality standards, project monitoring and effectiveness of mitigation measures.

ERP No. D–IBR–K28016–CA Rating EC2, Los Vaqueros Water Quality and Reliability Project, Implementation, Section 10 and 404 Permits and Possible NPDES Permit, Contra Costa Water District, Contra Costa County, CA.

Summary

EPA expressed environmental concerns regarding potential project impacts to fisheries, wetlands and air quality. EPA requested that the final document commit to mitigate for potential adverse impacts and that the project will not conflict with the availability of water to meet existing and reasonably foreseeable future protective water quality standards.

ERP No. D–IBR–K34009–CA Rating EO2, Arvin-Edison/Metropolitan Water Storage and Exchange Program, Central Valley Project, Funding and Implementation, City of Arvin, Kern County, CA.

Summary

EPA expressed objections to the proposed program which is based on water quality standards that are not protective of fish and wildlife. EPA requested that the mitigation analysis be expanded and that final decisions on the program await adoption of protective water quality standards.

ERP No. D–MMS–A02235–00 Rating EO2, 1993 Central and Western Gulf of Mexico Outer Continental Shelf (OCS) Oil and Gas Lease Sales No. 142 and No. 143, Lease Offerings, offshore AL, LA, TX and MS.

Summary

EPA objected to proposed unrestricted leasing without inclusion of protective environmental stipulations. EPA also recommended that an interim ozone (03) modeling effort be undertaken in order to gauge impacts of offshore emissions on 03 levels onshore and requested additional information concerning Floating Production Systems before publication of the final environmental impact statement.

Final EISs

ERP No. F–AFS–K65136–CA CASA-Guard Timber Sale, Implementation, Sequoia National Forest, Cannell Meadow Ranger District, Tulare and Kern Counties, CA.

Summary

Review of the final EIS was not deemed necessary. No formal letter was sent to the agency.

ERP No. F–AFS–K65138–CA Red Hill Planning Area Timber Sale, Implementation, Sequoia National Forest, Tule River Ranger District, Tulare County, CA.

Summary

Review of the final EIS was not deemed necessary. No formal letter was sent to the agency.

ERP No. F–COE–K36100–CA American River Watershed Flood Plain Protection Project, Construction, Operation and Maintenance, Implementation, Sacramento, Placer and Sutter Counties, CA.

Summary

EPA expressed environmental concerns about significant issues that remain unresolved which are: (1) Corp's separate evaluations of related flood control actions, (2) the lack of a clear identification of the least damaging practicable alternative as required by Section 404 of the Clean Water Act, (3) significant cumulative environmental impacts, (4) potential impacts on the Central Valley Project/State Water Project, and (5) adequate mitigation.

ERP No. F–USA–K11050–HI Strategic Target System Program, Launching of nonnuclear payloads from the Kauai Test Facility at the Pacific Missile Test Facility, Island of Kauai, HI.

Summary

Review of the final EIS was not deemed necessary. No formal letter was sent to the agency.

ERP No. FS–COE–G39026–AR Lakes Greeson, Ouachita and DeGray Operation and Maintenance, Updated Information, Lake Greeson/Little Missouri River Water Quality Improvement and Fishery Enhancements, Pike County, AR.

Summary

EPA believed that the work to be done would be minor and temporary, with expected benefits to water quality and fisheries exceeding any anticipated impacts.

Dated: June 2, 1992.

Marshall Cain,

Senior Legal Advisor, Office of Federal Activities.

[FR Doc. 92–13209 Filed 6–4–92; 8:45 am]

BILLING CODE 6560–50–M

[OPP–00321; FRL–4070–4]

FIFRA Scientific Advisory Panel; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meeting.

SUMMARY: There will be a 1–day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) to review a set of scientific issues being considered by the Agency in connection with the peer review classification of Facet® as a Group C carcinogen; Bromoxynil as a Group C carcinogen; Triallate as a Group C carcinogen; Dimethoate as a Group C carcinogen;

and the PD 2/3 for Inorganic Arsenicals. The meeting will be open to the public.

DATES: The meeting will be held on Thursday, June 25, 1992, from 8:30 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at: Holiday Inn Crystal City, 15th St. and Jefferson Davis Highway, Arlington, VA 22202, (703) 920–0772.

FOR FURTHER INFORMATION CONTACT: By mail: Robert B. Jaeger, Designated Federal Official, FIFRA Scientific Advisory Panel (H7509C), Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 815B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703) 305–5369/5244.

Copies of documents related to items 1–5 may be obtained by contacting: By mail: Public Response and Program Resources Branch, (H7506C), Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1128 Bay, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5434.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include the following topics:

1. Review a set of scientific issues in connection with the Agency's classification of Facet® as a Group C, possible human carcinogen, based on the induction of benign pancreatic acinar cell adenomas in male rats.

2. Review a set of scientific issues in connection with the Agency's classification of Bromoxynil as a Group C, possible human carcinogen, based upon a dose–related increase in liver carcinomas and adenomas in male mice. A low dose extrapolation model from the experimental animal tumor data is recommendation for quantitation of human risk (Q1*).

3. Review a set of scientific issues in connection with the Agency's classification of Dimethoate as a Group C, possible human carcinogen, based upon equivocal hemolymphoreticular tumors in male mice, compound related weak effect of combined spleen and lymph tumors in male rats. Positive mutagenic activity was also observed.

4. Review a set of scientific issues in connection with the Agency's classification of Triallate as a Group C, possible human carcinogen, based upon a statistically significant increase of hepatocellular carcinomas in male mice.

5. Evaluate the Special Review PD 2/3 for Inorganic Arsenicals specifically as it regards the use on cotton.

Any member of the public wishing to submit written comments should contact Robert B. Jaeger at the address or the phone number given above to be sure that the meeting is still scheduled and to confirm the Panel's agenda. Interested persons are permitted to file written statements before the meeting. To the extent that time permits and upon advance notice to the Designated Federal Official, interested persons may be permitted by the chairman of the Scientific Advisory Panel to present oral statements at the meeting. There is no limit on written comments for consideration by the Panel, but oral statements before the Panel are limited to approximately 5 minutes. Since oral statements will be permitted only as time permits, the Agency urges the public to submit written comments in lieu of oral presentations. Persons wishing to make oral and/or written statements should notify the Designated Federal Official and submit 10 copies of a summary no later than June 25, 1992, in order to ensure appropriate consideration by the Panel.

Information submitted as a comment in response to this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice. The public docket will be available for public inspection in rm. 1128 Bay at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. All statements will be made part of the record and will be taken into consideration by the Panel.

Copies of the Panel's report of their recommendations will be available 10 to 15 working days after the meeting and may be obtained by contacting the Public Response and Program Resources Branch, at the address or telephone number given above.

Dated: June 1, 1992.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 92–13217 Filed 6–4–92; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–59940; FRL–4071–1]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 2 such PMN(s) and provides a summary of each.

DATES: Close of review periods:

Y 92–138, May 30, 1992.

Y 92–139, June 1, 1992.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. E–545, 401 M St., SW., Washington, DC, 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office, NE–G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

Y 92–138

Manufacturer. Henkel Corporation.

Chemical. (G) Polyester.

Use/Production. (S) Plasticizer for polyvinyl chloride resin. Prod. range: 1,000,000–2,000,000 kg/yr.

Y 92–139

Manufacturer. Confidential.

Chemical. (G) Saturated, oil-free polyester resin.

Use/Production. (S) Polyester resin from painted coatings, inks. Prod. range: Confidential.

Dated: June 1, 1992.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92–13219 Filed 6–4–92; 8:45 am]

BILLING CODE 6560–50–F

[OW-FRL-4140-2]

Water Quality Criteria; Availability of Guidance and Request for Comment

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of interim guidance on interpretation and implementation of ambient water quality criteria for protection of aquatic life from the toxic effects of metals.

SUMMARY: Purusant to section 301(a)(1) of the Clean Water Act, EPA has developed interim guidance on interpretation and implementation of metals criteria in State water quality programs for protection of aquatic life. The guidance deals with issues stemming from differences in the biological availability of metals in ambient waters and in laboratory toxicity test waters. It recommends chemical analytical methods for use with metals criteria, and recommends a toxicity testing approach for adjusting criteria for site-specific ambient water characteristics. As interim guidance, it represents EPA's current recommendations on implementation of metals criteria. Many of the methods recommended in the guidance are already in use in some States. EPA will consider all public comments in deciding the content and timing of revisions to the guidance.

DATES: Written comments should be addressed to the person listed directly below by September 3, 1992.

FOR FURTHER INFORMATION CONTACT: Call Ecological Risk Assessment Branch at (202) 260–0658 and request "Interim Metals Guidance", or write Charles Delos, Mail Code WH–586, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

AVAILABILITY OF DOCUMENT: This notice announces the availability of the following document for public review and comment and as interim guidance: "Interim Guidance on Interpretation and Implementation of Aquatic Life Criteria for Metals". Copies of the document may be obtained upon request, as described above. The document is also available for public inspection during normal business hours at: Public Information Reference Unit, U.S. Environmental Protection Agency, room 2404 (rear), 401 M Street SW., Washington, DC 20460. Copies of this document are also available for review in the EPA Regional Office libraries.

BACKGROUND INFORMATION: Section 304(a)(1) of the Clean Water Act (33 U.S.C. 1314(a)(1)) requires EPA to publish and periodically update ambient water quality criteria. These criteria are to reflect the latest scientific knowledge on the identifiable effects of pollutants on public health and welfare, aquatic life, and recreation.

Over the years, EPA has issued a number of ambient water quality criteria for the protection of aquatic organisms and their uses from the toxic effects of metals. With respect to today's notice, the following metals criteria are of particular interest: antimony and silver, published November 28, 1980 (45 FR 79318); arsenic, cadmium, chromium, copper, lead, and mercury, published July 29, 1985 (50 FR 30784); nickel, published December 3, 1986 (51 FR 43665); zinc, published March 2, 1987 (52 FR 6213); selenium, published January 5, 1988 (53 FR 177); aluminum, published August 30, 1988 (53 FR 33177), and antimony and silver, published as draft revisions of the above mentioned 1980 criteria, May 14, 1990 (55 FR 19986).

The guidance announced in today's notice supersedes all statements in the above documents concerning analytical methods for measuring metals concentrations. The guidance does not supplant the numerical criteria set forth in the above documents.

REQUEST FOR COMMENTS: EPA is publishing the document as interim guidance. As such, it represents EPA's current guidance for use in all States. EPA is also soliciting comments on the guidance, and will consider such comments in deciding the content and timing of revisions to the guidance. Due to the complexity of metals specification and its effect on toxicity, the guidance, based on the currently available information, does not solve all problems relating to metals bioavailability. EPA anticipates continuing research on metals toxicity, and thus anticipates revising the guidance from time to time, as necessary.

EPA will consider immediate revision of the guidance if the public comment so warrants. EPA will also consider the public comments in planning future work on metals criteria and in making later revisions to the guidance. Comments are especially solicited regarding specific methods for directly measuring bioavailability of metals, and for predicting the environmental fate of particulate and complexed metals.

With the publication of this interim guidance, EPA is granting a petition by Kilpatrick & Cody and the Santa Ana River Dischargers Association to modify its criteria document recommendations regarding analytical methods for metals.

EPA is currently considering a petition by the City of Colorado Springs et al. to: (1) Develop part 136 analytical methods to test for acid soluble and dissolved metals, and (2) either reinterpret 40 CFR 122.45(c) or modify the rule to allow water quality-based effluent limitations for metals to be expressed in either dissolved or acid soluble form. The interim guidance issued today does not represent a final Agency response to the matters raised in the petition. However, by recommending techniques for accounting for the differing bioavailability of metals in different locations, EPA believes that today's guidance may serve to mitigate the petition's concerns that strict application of total recoverable metals methodology may be unnecessarily overprotective. EPA currently anticipates that it will issue a final response to the petition after receipt and consideration of comments on today's interim guidance.

Dated: May 28, 1992.

Tudor T. Davies,

Director, Office of Science and Technology.

[FR Doc. 92–13214 Filed 6–4–92; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budgetfor Review

May 28, 1992.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street NW., Washigton, DC 20036, (202) 452–1422. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0106.

Title: Section 43.61, Reports of Overseas Telecommunications Traffic.

Report Number: FCC Report 43.61.

Action: Revision of a currently approved collection.

Respondents: Business or other for-profit (including small businesses).

Frequency of Response: Annually and Other: Corrections are reported three months after the annual filing.

Estimated Annual Burden: 110 responses; 9 hour average burden per response; 990 hours total annual burden.

Needs and Uses: The collection of § 43.61 overseas telecommunications traffic data is necessary for the Commission to fulfill its regulatory responsibilities under the Communications Act of 1934, as amended, sections 151–609 (1981). The collected data are essential to both the FCC and carriers for international facilities planning, facility authorization, monitoring emerging developments in communications services, analyzing market structures, tracking the balance of payment in international communications services, and market analysis purposes. Subjected carriers are required to submit their reports no later than July 31 of each year for the preceding period of January through December. A revised report must be submitted for inaccuracies exceeding five percent (5%) of the reported figure by October 31 pursuant to § 43.61(d). The Commission adopted all the proposals set forth in the NPRM in a report and order, CC Docket No. 91–22, released 2/12/92. The Common Carrier Bureau has issued the attached Public Notice to solicit public comment on the filing manual for the § 43.61 data in compliance with the Commission's directive in the report and order. The data contained in Section 43.61 traffic reports are used by the Commission to determine whether to grant applicants authority under section 214 of the Communications Act of 1934, as amended, 47 U.S.C. 214 (1980) to acquire and operate facilities for the provisions of telecommunications services between the United States and international points of communication. As part of our evaluation under section 214, we must determine whether competition is feasible in the market(s) sought to be served and whether the competition is in the public interest. We also use the data in our facilities planning processes to estimate traffic and market trends in various regions of the world. We further use the collected data to monitor the development and competitiveness of each international market and to gauge the competitive impact of our decisions on the market. Moreover, the data are used to track the growth in net settlement payments and identify instances of particularly rapid growth.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–13138 Filed 6–4–92; 8:45 am]

BILLING CODE 6712–01–M

[Report No. 1893]

Petitions for Reconsideration and Clarification of Actions in Rulemaking Proceedings

May 29, 1992.

Petitions for reconsideration and clarification have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor Downtown Copy Center (202) 452–1422. Oppositions to these petitions must be filed on or before June 22, 1992.

See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of the Commission's Rules to provide for filing and processing of applications for unserved areas in cellular service and to modify other cellular rules. (CC Docket No. 90–6). Number of Petitions Filed: 4.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–13137 Filed 6–4–92; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Withdrawal of Statement of Policy on Brokered Funds

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Withdrawal of statement of policy.

SUMMARY: The FDIC is withdrawing its policy statement on "Brokered Funds" that was adopted by the Board of Directors on February 13, 1970 (published at 35 FR 5019, March 24, 1970). This statement warned of loans based on brokered deposits that had led to some bank closings about that time and the possibility of violating the interest rate regulations during the course of funding such arrangements.

Section 29 of the Federal Deposit Insurance Act, which was added by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, established a comprehensive regulatory scheme for the solicitation and acceptance of brokered deposits by all insured depository institutions. In defining "deposit broker," section 29(g)(1)(B) specifically references the types of transactions the earlier policy statement was designed to address and hence those transactions are now covered by the regulatory scheme established by section 29. The interest rate regulations were rescinded many years ago. Consequently, the policy statement is now obsolete and unnecessary.

EFFECTIVE DATE: June 5, 1992.

FOR FURTHER INFORMATION CONTACT: William G. Hrindac, Examination Specialist, Division of Supervision, (202) 898–6892, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

By order of the Board of Directors.

Dated at Washington, DC, this 20th day of May 1992.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 92–13187 Filed 6–4–92; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

San Francisco Port Commission et al., Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–004161–008.

Title: San Francisco Port Commission/Marine Terminals Corporation Nonexclusive Management Agreement.

Parties:

San Francisco Port Commission ("Port")

Marine Terminals Corporation ("Management Contractor").

Synopsis: The Agreement provides for: (1) A new schedule for revenue sharing with Management Contractor; (2) an option for Management Contractor to cancel the Agreement if the Port cannot maintain the berthing spaces at the depths set forth in the Agreement; (3) Management Contractor to comply with City requirements; and (4) all other terms and conditions in the Agreement to remain the same.

Agreement No.: 224–200119–002.

Title: Port of Seattle/Trans Pacific Container Service Corporation Leasing Agreement.

Parties:

The Port of Seattle ("Port"),

Trans Pacific Container Service Corporation ("Trans Pacific").

Synopsis: The Agreement provides for the Port to construct approximately 7.26 acres of additional container yard at the south end of the terminal for use by Trans Pacific. It also provides for reimbursement, to Trans Pacific from the Port, for the cost of a constructed storage building and the subsequent amortization of that amount by Trans Pacific.

Dated: June 1, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92–13142 Filed 6–4–92; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

[Announcement Number 221]

1992 Capacity Building for Core Components of Breast and Cervical Cancer Prevention and Control Programs

Introduction

The Centers for Disease Control (CDC), the Nation's prevention agency, announces the availability of Fiscal Year (FY) 1992 funds for new competing cooperative agreements to initiate capacity building for the core components of comprehensive breast and cervical cancer control programs.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Cancer. (For ordering a copy of Healthy People 2000, see the section Where to Obtain Additional Information.)

Authority

This program is authorized under sections 301(a) [42 U.S.C. 241(a)] and 1507 [42 U.S.C. 300n–3] of the Public Health Service Act, as amended.

Eligible Applicants

Eligible applicants are the official public health agencies of states or their bona fide agents or instrumentalities. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and federally-recognized Indian tribal governments. Excluded are the state health departments of California, Colorado, Maryland, Michigan, Minnesota, Missouri, Nebraska, New Mexico, North Carolina, South Carolina, Texas, and West Virginia. They were funded under Program Announcement Numbers 121 and 122, "Early Detection and Control of Breast and Cervical Cancer" in Fiscal Years 1991 and 1992, and are not eligible to compete for funding under this program announcement.

In addition, state health departments or their bona fide agents or instrumentalities which secure funding under this program announcement will be eligible to compete for funding under other CDC announcements for early detection and control or breast and cervical cancer anytime during this project period.

Availability of Funds

Approximately $2,500,000—$5,000,000 is available in Fiscal Year 1992 to fund approximately 20 awards. It is expected that the average award will be $275,000 ranging from $250,000 to $300,000. It is expected that the awards will begin on or about September 30, 1992, and are usually made for a 12-month budget period within a project period of up to 3 years. Funding estimates may vary and are subject to change.

Continuation awards within the project period are made on the basis of satisfactory progress and availability of funds.

At the request of the applicant, federal personnel may be assigned to a project in lieu of a portion of the financial assistance.

Purpose

The purpose of these cooperative agreements is to support state health departments in their efforts to develop their capacity to carry out a program for early detection and control of breast and cervical cancer. Resources available under this program announced may not be used to support screening and follow up services for breast and cervical cancer.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under A., below, the CDC shall be responsible for conducting activities under B., below:

A. *Recipient Activities*

The following six elements are essential and integral components in the development of a state-based comprehensive breast and cervical cancer control program. Planning for conducting the core components must occur during the first and second year, with implementation begun by completion of the project period.

1. Breast and Cervical Cancer Control Plan and Coalition

In developing a comprehensive breast and cervical cancer control program, the applicant should include the following:

a. A state level breast and cervical cancer control coalition including representative from key private, professional, voluntary and public (e.g., American Cancer Society) cancer organizations, legislators, and consumers.

b. A proposed breast and cervical cancer control plan that describes:

(1) Goals and objectives to address breast and cervical cancer control.

(2) Proposed strategies to meet those objectives.

(3) An assessment of existing and needed resources to develop the comprehensive breast and cervical cancer control program.

2. Public Education

A plan for a comprehensive public education program based on an assessment of the target populations educational needs. Successful public education programs are those that influence knowledge, attitudes, and practices related to breast and cervical cancer screening adherence in target populations by utilizing all available resources which may include, but are not limited to, the American Cancer Society, state medical societies, and universities.

3. Professional Education

A plan for conducting an assessment of the health care providers to determine important practice information useful in developing an education program. This could include:

(1) Screening behaviors in their practices;

(2) Knowledge of screening guidelines;

(3) Use of screening reminder systems;

(4) Laboratories used for reading Pap smears; and

(5) Sites of mammography referrals.

After the health care provider assessment has been conducted, states should collaborate with appropriate professional groups and organizations to develop a provider education program. The development of a health provider education program would transmit information on the efficacy and appropriate use of screening procedures and reminder systems for providers.

4. Quality Assurance

In preparation for developing a statewide quality assurance component: (1) Conduct a statewide assessment to determine the current status and identify areas of need in mammography and cervical cytology quality assurance and (2) develop the components of a comprehensive quality assurance program based on guidelines developed by the Public Health Service for mammography and by the Clinical Laboratory Improvement Act 1988 for cervical cytology.

a. *Mammography.* The achievement of mammography's full potential contribution to the process of early breast cancer detection requires that quality assurance procedures be systematically applied in routine practice. Mammography quality assurance encompasses the importance of the design, functioning, and operation of equipment, patient and provider communication, image quality, the interpretation of the mammogram, the communication of the radiologist's interpretation, and record keeping.

The minimal quality level for mammography shall include the following criteria:

(1) Properly trained and experienced personnel.

(2) Proper use of appropriate, well-maintained, dedicated equipment.

(3) Periodic performance evaluation tests of the imagining system following guidelines recommended by the American College of Radiology.

b. *Cervical cytology.* The minimal quality level for cervical cytology shall include the following criteria:

(1) Properly trained, accredited, and certified personnel.

(2) Licensed laboratories that maintain an ongoing quality assurance program, to include provisions for alternative cervical cancer screening techniques if such systems are used by the participating laboratories.

(3) Appropriate reporting and communication of results.

5. Surveillance

States should assess current capabilities and develop a plan to ensure that changes in disease burden and screening behavior can be adequately monitored. To do this, a surveillance system should:

a. Collect population-based information on race, incidence, staging at diagnosis, and mortality from breast and cervical cancers.

b. Identify population segments at higher risk for disease and for failure to be screened.

c. Identify factors that contribute to disease burden and to limited or inequitable access to early detection and treatment services.

d. Monitor the number and characteristics of women screened and outcomes of screening.

e. Monitor screening resources, including the number of mammography facilities, cytology laboratories, and providers of cytology screening.

f. Design and conduct case studies and other epidemiologic investigations to determine factors associated with avoidable morbidity and mortality.

g. Publish a yearly report summarizing the population status with respect to these conditions.

6. Evaluation

Attention should be given to the development, establishment, and design of individual components to ensure that there can be meaningful evaluation. The evaluation plan should assess the performance and effectiveness of intervention components, including:

a. Coalition development.

b. Cancer plan development.

c. Public education.

d. Professional education.

e. Quality assurance.

f. Surveillance.

At a minimum, the evaluation plan should assess the existing state breast and cervical cancer control program and should include the following:

a. A description of the evaluation plan and how evaluation results will be used.

b. A description of methods used to assess the development of program activities in all program components.

B. *CDC Activities*

1. Convene meetings for representatives of states receiving awards for workshops and sharing information.

2. Convene meetings for representatives of states receiving awards for training purposes.

3. Disseminate to state health departments relevant state-of-the-art research findings and public health recommendations that relate to early detection, diagnosis, and treatment for breast and cervical cancer.

4. Collaborate with recipients in planning, operating, and evaluating program activities and coordinating projects' participation in all components of the cancer program.

5. Collaborate with recipients in developing surveillance and data systems and in the states' analysis and evaluation of data.

6. Provide technical assistance in the development of public and professional education components.

7. Collaborate with recipients in disseminating outcome indicators and their integration into program operation.

8. Provide guidance in the development and establishment of specific morbidity reduction objectives.

9. Provide technical information and guidelines in the development of quality assurance procedures for mammography and cervical cytology.

10. Provide technical assistance and direction in the development of evaluation efforts.

Evaluation Criteria

The initial application for the proposal for capacity building of the core components of a comprehensive breast and cervical cancer control program will be reviewed according to the evaluation criteria listed below. The application and the appendices should not exceed 100 pages. In addition, special consideration will be given in the review process to applications from state health departments at an introductory level in the planning of statewide approaches to breast and cervical cancer screening.

1. The capability of the state health department's commitment to carrying out the planning, intervention, and evaluation process and the overall plan to accomplish this process. (10 points)

2. The extent to which the applicant assesses the breast and cervical cancer program needs of the target population and justifies the program's focus on the target population. (10 points)

3. The consistency of the specific and time-related, measurable objectives with the stated purpose of the cooperative agreement and the ability to achieve the objectives, activities, and milestones of the program within the specified period. (15 points)

4. The extent of the applicant's ability to assure community and professional support and involvement, to use available resources, and to ensure that the coalition assumes a major role in the program. (10 points)

5. The ability of the applicant to identify appropriate staff for the program who are available and trained to carry out the required task. (5 points)

6. The extent to which the applicant's plan reflects integration of breast and cervical cancer program elements into the health care delivery system through the formation of program linkages and the development of a cancer program advisory group or task force. (10 points)

7. Evidence of the applicant's commitment to develop and maintain a surveillance system, a breast and cervical cancer registry, and a method to track the knowledge, attitudes, and practices of the targeted population. (10 points)

8. The quality of the public education plan, including the ability to develop, carry out, and evaluate interventions for target populations. (5 points)

9. The quality of professional education plan, including the ability to develop, carry out, and evaluate interventions for target populations. (5 points)

10. The quality of the mammography and cervical cytology quality assurance plan. (10 points)

11. The quality of the applicant's evaluation plan. (10 points)

12. The extent to which the budget is reasonable and consistent with the intended use of cooperative agreement funds. (Not weighted)

Continuation awards within the project period will be made on the basis of the following criteria:

1. Availability of funds.

2. The extent to which the accomplishments of the current budget period show that the applicant is achieving its objectives.

3. The consistency of the specific and time-related measurable objectives for the new budget period with purpose of the cooperative agreement and the extent to which they are realistic, specific, and measurable.

4. The extent to which the methods described will clearly lead to the achievement of these objectives.

5. The quality of the proposed evaluation plan to monitor the efficacy of the proposed methods.

6. The extent to which the budget request is justified, reasonable, and consistent with the intended use of cooperative agreement funds.

7. Evidence of long-term commitment to nonfederal support for which the amount of support increases over time.

Recipient Financial Participation

This program has no statutory formula. No specific matching funds are required; however, the application should include specifics on the applicant's contribution to the overall program cost.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372. E.O. 12372 sets up a system for state and local government review of proposed federal assistance applications. Applicants (other than federally-recognized Indian tribal governments) should contact their state Single Point of Contact (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC for each affected state. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Atlanta, Georgia 30305. The due date for state process recommendations is 60 days after the application deadline date for new and competing continuation awards. The granting agency does not guarantee to "accommodate or explain" for state process recommendations it receives after that date.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.283.

Other Requirements

Projects that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Application Submission and Deadline

The original and two copies of the application PHS Form-5161-1 must be submitted to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mailstop E-14, Atlanta, Georgia 30305, on or before July 16, 1992.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications which do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description and information on application procedures are contained in the application package. Business management technical assistance may be obtained from Gordon R. Clapp, Grants Mangement Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Atlanta, Georgia 30305, (404) 842-6508. Programmatic technical assistance may be obtained from George-Ann Stokes, Program Services Branch, Division of Cancer Prevention and Control, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control, 1600 Clifton Road, NE., Mailstop K-52, Atlanta, Georgia 30333, (404) 488-5760.

Please refer to Program Announcement Number 221 when requesting information and submitting an application in response to this Request for Assistance.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017-001-00474-0] or Healthy People 2000 (Summary Report, Stock No. 017-001-00473-1) referenced in the INTRODUCTION through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone 202-783-3238).

Dated: June 1, 1992.

Robert L. Foster,

Acting Associate Director for Mangement and Operations, Centers for Disease Control.

[FR Doc. 92-13185 Filed 6-4-92; 8:45 am]

BILLING CODE 4160-18-M

[Announcement Number 232]

Cooperative Agreements To Support State Pregnancy Nutrition Surveillance Program Announcement and Availability of Funds for Fiscal Year 1992

Introduction

The Centers for Disease Control (CDC), the Nation's prevention agency, announces the availability of Fiscal Year 1992 funds to implement and conduct the enhanced Pregnancy Nutrition Surveillance System (PNSS). The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of nutrition and maternal and infant health. (For ordering a copy of Healthy People 2000, see the Section, Where to Obtain Additional Information.)

Authority

This program is authorized under section 301(a) of the Public Health Service Act [42 U.S.C. 241(a)], as amended, and section 317(k)(3) of the Public Health Service Act [42 U.S.C. 247b(k)(3)].

Eligible Applicants

Because the intent of this cooperative agreement is to develop state capacity to continuously conduct program-based pregnancy nutrition surveillance, assistance will be provided only to the official public health departments of states or their bona fide agents or instrumentalities. This includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and federally-recognized Indian tribal governments. States and territories who received funding in Fiscal Year 1991 are not eligible. No other applications will be accepted.

Availability of Funds

Approximately $500,000 is available in Fiscal Year 1992 to fund approximately 10 awards for PNSS. It is expected that the average award will be $50,000, ranging from $40,000 to $55,000. It is expected that the awards will begin on or about August 15, 1992, and are usually made for a 12-month budget period within a project period of up to 4 years. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory performance and availability of funds. Priority will be given to states which have areas designated as Healthy Start communities or with high infant mortality rates.

Purpose

The purposes of this Cooperative Agreement are to:

A. Promote the development and use of standardized pregnancy nutrition surveillance methods in support of state programs for Maternal and Child Health (MCH), the Supplemental Food Program for Women, Infants, and Children (WIC), Healthy Start communities, and other relevant programs such as Community and Migrant Health Centers, to reduce pregnancy-related health risks and adverse pregnancy outcomes.

B. Assist states in monitoring trends in the prevalence of prenatal and early infancy nutrition and behavioral risk factors, which are major predictors of low birth weight and infant mortality.

C. Provide information needed by the states to assess coverage, targeting, and effectiveness of prenatal and early infancy programs; to redirect health care services accordingly; and to evaluate the extent to which service redirection results in improved health and nutrition outcomes.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting activities under A., below, and CDC shall be responsible for conducting activities under B., below. The application should be presented in a manner that demonstrates the applicant's ability to address the proposed activities in a collaborative manner with CDC.

A. Recipient Activities

1. Identify and describe communities within the state which have high infant mortality rates, including Healthy Start Communities.

2. Identify and describe public health programs, such as WIC, that have the capability of providing statewide data on pregnant and postpartum women.

3. Develop and maintain, in collaboration with CDC, a data collection system for PNSS, including the flow, editing, analysis, and application of data and the design and field test of a data collection tool in appropriate programs.

4. In accordance with guidelines to be provided by CDC, collect clinical and program data on risk factors associated with poor pregnancy outcomes among high-risk populations (e.g., those defined by tobacco use, prenatal weight gain, socioeconomic indicators, trimester of first prenatal visit, alcohol use).

5. Plan and implement procedures for ensuring the completeness and quality of the data, including training and data editing.

6. Coordinate the surveillance system with various organizational units in the agency to ensure consistency and comparability in the data that are collected and to ensure a single point for data management.

7. With technical assistance and/or provision of software from CDC, produce a clean, edited tape for analysis that includes the specified material and postpartum data.

8. Develop and implement a plan for the analysis and use of surveillance data in appropriate prevention and intervention programs to reduce the prevalence of risk factors associated with low-birthweight outcomes.

9. Prepare and disseminate surveillance information, in collaboration with CDC, through presentation and publication in appropriate forums.

10. Propose an evaluation strategy and collaborate with CDC to assess the effectiveness and efficiency of the surveillance system to monitor the health risks of the high-risk prenatal population.

11. Describe potential plans, or the feasibility and capability, for linking the prenatal information with birth certificates and other related data systems and the general plan for using such information.

B. CDC Activities

1. Collaborate in the design of standardized data items, definitions, procedures, and methods to collect the desired surveillance information.

2. Provide training in the appropriate skills to develop, manage, and implement the surveillance project.

3. Provide technical support for data processing or assist state participants in developing appropriate data-processing capabilities.

4. Assist states to analyze, interpret, and use the surveillance data to improve the coverage, targeting, and effectiveness of state interventions toward reducing pregnancy-related health risks.

5. Collaborate with the recipient in preparing and presenting program-relevant surveillance findings to appropriate state and national audiences.

6. Collaborate with the recipient in evaluating the effectiveness and

efficiency of the surveillance system to monitor and intervene upon the health risks of high-risk prenatal populations.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

A. Potential for Public Health Impact (10 Points)

1. Evidence that the state has a high rate of nutrition and behavioral health risks associated with low birthweight and infant mortality.
2. Evidence that the state has areas of high infant mortality and low birthweight, especially the existence of Healthy Start communities.
3. Evidence of state health department plans to improve the outcome of pregnancy through intervention programs to reduce risk factors occurring during pregnancy and of the state health department's ability to develop, implement, evaluate, and use surveillance activities to support effective program interventions.
4. The extent and availability of statewide data, such as 100 percent of clinics of the WIC Program and, where feasible, multiple program sources of data (e.g., WIC, Healthy Start communities, prenatal clinics, Medicaid).

B. Capability (30 Points)

1. The extent and appropriateness of previous efforts to monitor health risks of prenatal, pediatric, and other high-risk populations by using similar systems and data collection methods, such as the Pregnancy Nutrition Surveillance System, the Pregnancy Risk Assessment Monitoring System, the Pediatric Nutrition Surveillance System, or other statewide surveillance systems.
2. The ability to incorporate the PNSS data into one or more existing programs.
3. Evidence of strong working relationships with the organizational entities involved with this project.
4. Evidence that key project staff have experience in developing and implementing surveillance systems, analyzing data, and using data in evaluating and planning program activities.

C. Project Design (55 Points Total)

1. The appropriateness of goals, objectives, and activities stated in the overall plan related to: (40 points)

Program Development and Implementation (10 Points)

a. The extent to which the applicant describes characteristics of the target population, participating programs and clinics, and, if relevant, the existing or planned health information data collection system into which PNSS will be incorporated (e.g., WIC certification data system).

b. The adequacy of procedures for selecting the target population, the extent to which information will be collected on the initial prenatal and subsequent postpartum visit, and evidence of the ability to consolidate information collected into a single record for analysis.

c. The adequacy of procedures for designing, implementing, and debugging the surveillance system. This includes the feasibility of the proposed time schedule for designing, pretesting, and evaluating the surveillance system, and the submission of quarterly data tapes to CDC.

Training and Data Quality (10 Points)

The adequacy of proposed data management procedures to assure data quality (e.g., ensuring data completeness, training personnel, and validating the quality of data, data entry, and editing).

Data Analysis and Dissemination (10 Points)

a. The adequacy of the applicant's plans to analyze the data on a timely basis and to share the data with CDC for providing national estimates.

b. The adequacy of the applicant's plans to supply surveillance findings to the planning and evaluation of intervention activities.

c. The adequacy of the applicant's plans in coordinating PNSS data collection, analysis and dissemination efforts with appropriate others such as the State's Primary Care Access Plan as funded by the Federal Bureau of Health Care Delivery and Assistance (BHCDA).

Program Evaluation (10 Points)

How well the applicant understands what surveillance data will be needed and how the data will be used in planning pregnancy risk-reduction activities and evaluating their effectiveness.

2. The specific roles and responsibilities of participating units of the state health department are described in relationship to: Project management; design of instruments; data collection, analysis, interpretation, and dissemination; and enlisting the support of local health departments/agencies, especially Healthy Start communities. (15 points)

D. Commitment (5 Points)

Evidence that the organizational alignment is conducive to accomplishing the stated objectives, including written commitments from the appropriate organizational entities responsible for MCH and WIC activities, state vital records, state data processing, and other organizational units that would be expected to support activities related to the surveillance system.

E. Budget (Not Weighted)

The extent to which the applicant describes the total amount of funds requested in each of the object class categories and clearly links the budget items to objectives and activities proposed for the budget period.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372. Executive Order 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants (other than federally-recognized Indian tribal governments) should contact their state Single Point of Contact (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC of each affected state. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Atlanta, Georgia 30305. The due date for state process recommendations will be 30 days after the application deadline date for new and competing continuation awards. (A waiver for the 60 day requirement has been requested.) The granting agency does not guarantee to "accommodate or explain" for state process recommendations it receives after that date.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.283.

Application Submission and Deadline

A signed original and two copies of the application, PHS Form 5161–1, must be submitted to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 300, Mail Stop: E–14, Atlanta, Georgia 30305, on or before June 12, 1992.

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date, or

(b) Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Application:* Applications that do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures, an application package, and business management technical assistance may be obtained from Leah Simpson, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mail Stop E–14, Atlanta, Georgia 30305, (404) 842–6803.

Programmatic technical assistance may be obtained from Colette Zyrkowski, Division of Nutrition, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control, Mail Stop K–25, 1600 Clifton Road, NE., Atlanta, Georgia 30333, (404) 488–5099.

Please refer to announcement Number 232 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the INTRODUCTION through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, (Telephone 202–783–3238).

Dated: June 1, 1992.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control.

[FR Doc. 92–13177 Filed 6–4–92; 8:45am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 92F–0197]

Agway, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Agway, Inc., has filed a petition proposing that the food additive regulations be amended to provide for (1) increasing the maximum absorbed dose of ionizing radiation approved for the safe treatment of the complete diets of certain laboratory animals and (2) the treatment of the complete diets of guinea pigs and rabbits.

DATES: Written comments by August 4, 1992.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Woodrow M. Knight, Center for Veterinary Medicine (HFV–226), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8731.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 2223) has been filed by Agway Inc., P.O. Box 4933, Syracuse, NY 13221–4933. The petition proposes to amend the food additive regulations in § 579.22 *Ionizing radiation for treatment of laboratory animal diets* (21 CFR 579.22) to provide for (1) increasing the maximum absorbed dose of ionizing radiation used for microbial disinfection of the complete diets of certain laboratory animals from the currently approved level of 2.5 megarads to 5.0 megarads and (2) the addition of the complete diets of guinea pigs and rabbits to the list of those currently cleared for treatment.

The potential environmental impact of this action is being reviewed. The environmental assessment prepared by the petitioner may be seen at the Dockets Management Branch (address above). Comments from the public are invited. Those comments received by August 4, 1992 will be considered. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: May 29, 1992.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 92–13135 Filed 6–4–92; 8:45 am]

BILLING CODE 4160–01–F

The Prescription Drug Marketing Act of 1987; Notice of Commissioner's Industry Exchange Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it is holding a Commissioner's industry exchange meeting on the Prescription Drug Marketing Act of 1987 (PDMA). This meeting is intended to inform regulated industry, health professionals, and other interested persons of the PDMA's requirements, the agency's enforcement policies relating to the PDMA, and the State wholesale distributor licensing requirements.

DATES: The meeting will be held Wednesday, June 24, 1992, 8:30 a.m. to 4:30 p.m. Registration will be held between 7:30 a.m. and 8:30 a.m.

ADDRESSES: The meeting will be held at the Engineer's College of Puerto Rico, Rm. Salon Salvador V. Caro, Hato Rey, PR.

FOR FURTHER INFORMATION CONTACT: Jeanne White, Office of Small Business, Scientific, and Trade Affairs (HF–50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6776.

SUPPLEMENTARY INFORMATION: The Commissioner of Food and Drugs has previously indicated his intention to hold Commissioner's industry exchange meetings to disseminate information on timely issues and to get industry's views on these issues. This meeting was organized by FDA's Office of Small Business, Scientific, and Trade Affairs, the Center for Drug Evaluation and Research (the Center), and the Office of Regulatory Affairs.

FDA managers and technical officials will be present at the meeting to answer questions and hear your concerns about issues associated with the PDMA, such as interaction with the Center. Recent

policy initiatives also will be discussed. The agency believes that this exchange of information will be helpful to the drug industry regulated by FDA and to the agency in formulating plans for future management of the PDMA.

Dated: May 29, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-13136 Filed 6-4-92; 8:45 am]

BILLING CODE 4160-01-F

Health Resources and Services Administration

Availability of Funds for Community and Migrant Health Centers for Reducing Infant Mortality

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of availability of funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces the availability of approximately $10 million for grants to community health centers and migrant health centers (C/MHCs) in high infant mortality areas to further extend infant mortality reduction activities both within Healthy Start target areas and without. These grants will be awardedunder the provisions of the FY 1992 Appropriations Act of the Department of Health and Human Services, Public Law 102-163.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The Community and Migrant Health Centers program directly addresses the Healthy People 2000 objectives by improving access to preventive and primary care services for underserved populations, especially minority and other disadvantaged populations. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report: Stock No. 017-001-00473-01) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (Telephone 202-783-3238).

ADDRESSES: The PHS Regional Grants Management Officers (RGMOs) whose names and addresses are provided in Appendix I to this document are responsible for distributing application kits and guidance (Form PHS 5161-1 with revised Face Sheets DHHS Form 424, as approved by the OMB under control number 0937-0189), and completed applications must be submitted to them. Potential applicants should contact the appropriate RGMO. The RGMO can also provide assistance on business management issues.The application kit was available as of April 1, 1992.

DATES: Applications are due July 6, 1992. Applications shall be considered to have met the deadline if they are: (1) Received on or before the deadline date; or (2) postmarked before the deadline date and received in time for orderly processing. Untimely applications will be returned to the applicant. Applicants should obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service or request a legibly dated U.S. Postal Service postmark. Private metered postmarks shall not be accepted as proof of timely mailing.

FOR FURTHER INFORMATION CONTACT: For general program information and technical assistance, contact Ms. Joan Holloway, Director, Division of Special Populations Program Development, Bureau of Health Care Delivery and Assistance (BHCDA), 5600 Fishers Lane, Room 7A-22, Rockville, Maryland 20857 (301) 443-8143.

SUPPLEMENTARY INFORMATION

Background

This initiative is a collaborative effort between the BHCDA and the Office of Healthy Start in HRSA. As part of the Department's activities to reduce infant mortality, C/MHCs are providing basic perinatal care through C/MHC funds and enhanced perinatal services as part of their Comprehensive Perinatal Care Program (CPCP) activities. In addition, HRSA has a Healthy Start initiative which is a 5 year demonstration program that currently funds 15 communities (See appendix II) that have developed or are developing new and innovative approaches to delivering needed care to pregnant women and infants in areas with excessive numbers of infant deaths. These funds are expected to enhance existing perinatal programs, where appropriate, and to develop new perinatal capacity where needed.

Available Funds

There will be approximately $10 million in discretionary grants to expand current infant mortality reduction activities in federally funded C/MHCs participating in the Healthy Start initiative, and to establish new or to expand already existing perinatal systems in federally funded C/MHCs which are not in Healthy Start targeted areas and which have infant mortality rates of 15.7 or greater.

Number of Awards

Approximately 30 to 50 awards will be made, ranging from approximately $150,000 to $400,000. The project period for all C/MHCs will be four years.

Eligible Applicants

Eligible applicants are C/MHCs funded under sections 329 and 330 of the PHS Act that are participating in a Healthy Start program and serve a significant proportion of the Healthy Start targeted population and C/MHCs not in Healthy Start targeted areas serving an area or population whose infant mortality rates are 15.7 per 1000 live births or greater.

Criteria for Envaluation

Eligible applicants will be evaluated based upon the following:

C/MHCs in Healthy Start Targeted Areas

Need

- The relative need of the populations to be served for the comprehensive package of perinatal services to be provided based upon: (1) The demongraphic and health status characteristics of the population to be served; (2) the need and demand for perinatal services within the community; (3) an overview and analysis of the existing services and delivery systems currently available to serve this population as well as those services and systems which will be supported under the Healthy Start demonstration program; and (4) the identification of gaps within these services.

Proposed Plan to Close Gaps in Services

- The extent to which the proposed activities go beyond those services which are currently provided through basic section 329/330 grant support (including any CPCP funding) or other Federal (including those services proposed by the Healthy Start grant), State, or local funding;
- The adequacy and feasibility of the new or expanded efforts proposed to meet the needs of the population and to improve pregnancy outcomes by assisting the Healthy Start demonstration program in reaching the 50 percent reduction in infant mortaility in 4 years.
- The ability of the C/MHC to implement the proposed plan.

Collaboration/Coordination

- The extent to which the application is consistent with the goals and overall comprehensive plan of the Healthy Start

Consortia and/or Healthy Start grantee within the community.

• The degree to which the applicant intends to integrate its services with related services provided by State and local health departments and other health and social service providers (e.g. Medicaid, WIC, or other C/MHCs within the community).

Budget

• The appropriateness of the proposed budget in relation to other resources and the adequacy of the budget justification to support the proposed interventions for this initiative.

Evaluation

• The adequacy of the center's plan to evaluate the impact of these activities.

C/MHCs in NonHealthy Start Areas

Need

• The need as measure by: (1) a five year average of an infant mortality rate of 15.7 per 1000 live births or greater; (2) a low birth weight rate of 6.9 percent of live births or greater; (3) geographic barriers based on average travel time/distance to next nearest source of primary care that is accessible to Medicaid recipients and/or uninsured low income people in need of a sliding fee schedule; (4) a shortage of perinatal providers; and (5) other documented special access or health factors such as disparities in health status, high employment, high percentage of the uninsured amongst the populations served, or prevalence of conditions such as HIV infection, homelessness and/or substance abuse, or teen pregnancy.

Plans to Close Gaps in Services

• The extent to which the proposed package of services is consistent with the needs of the community.

• The extent to which the proposed activities go beyond those services which are currently provided through basic section 329/330 grant support (including any CPCP funding) or other Federal, State, or local funding.

• The adequacy and feasibility of the new or expanded efforts proposed to meet the needs of the population and to improve pregnancy outcomes.

• The ability of the C/MHC to implement the proposed plan.

Collaboration/Coordination

• The degree to which the applicant intends to integrate its services with related services provided by State and local health departments and other health and social service providers (e.g. Medicaid, WIC, or other C/MHCs within the community).

• The extent of community support.

Budget

• The appropriateness of the proposed budget in relation to other resources and the adequacy of the budget justification to support the proposed interventions for this initiative.

Evaluation

• The adequacy of the center's plan to evaluate the results of these activities in terms of improved health status.

In selecting applications for funding preference will be given to approved applications of C/MHCs participating in the Healthy Start initiative and those in rural areas (i.e., approved applications from C/MHCs in Healthy Start target areas and rural areas will be funded ahead of other applications).

Other Award Information

All grants to be awarded under this notice are subject to the provisions of Executive Order 12372, as implemented by 45 CFR part 100, which allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application kit will contain a listing of States which have chosen to set up a review system and will identify a State Single Point of Contact (SPOC) in each State for the review. Applicants (other than federally-recognized Indian tribal governments) should contact their SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State.

State process recommendations should be submitted to the appropriate Regional Office (see Appendix). The due date for State process recommendations is 60 days after the appropriate application deadline date. The BHCDA does not guarantee that it will accommodate or explain its response to State process recommendations received after this date.

In the OMB Catalog of Federal Domestic Assistance, the Community Health Center program is listed as Number 93.224 and the Migrant Health Center program is listed as Number 93.246.

Dated: April 1, 1992.

Robert G. Harmon,

Administrator.

Appendix I—Regional Grants Management Officers

Region I: Mary O'Brien, Grants Management Officer, PHS Regional Office I, John F. Kennedy Federal Building, Boston, MA 02203, (617) 565–1482

Region II: Steven Wong, Grants Management Officer, PHS Regional Office II, Room 3300, 26 Federal Plaza, New York, NY 10278, (212) 264–4496

Region III: Martin Bree, Acting Grants Management Officer, PHS Regional Office III, P.O. Box 13716, Philadelphia, PA 19101, (215) 596–6653

Region IV: Wayne Cutchens, Grants Management Officer, PHS Regional Office IV, Room 1106, 101 Marietta Tower, Atlanta, GA 30323, (404) 331–2597

Region V: Lawrence Poole, Grants Management Officer, PHS Regional Office V, 105 West Adams Street, 17th Floor, Chicago, IL 60603, (312) 353–8700

Region VI: Joyce Bailey, Grants Management Officer, PHS Regional Office VI, 1200 Main Tower, Dallas, TX 75202, (214) 767–3885

Region VII: Michael Rowland, Grants Management Officer, PHS Regional Office VII, Room 501, 601 East 12th Street, Kansas City, MO 64016, (816) 426–5841

Region VIII: Jerry F. Wheeler, Grants Management Officer, PHS Regional Office VIII, 1961 Stout Street, Denver, CO 80294, (303) 844–4461

Region IX: Linda Gash, Grants Management Officer, PHS Regional Office IX, 50 United Nations Plaza, San Francisco, CA 94102, (415) 556–2595

Region X: James Tipton, Grants Management Officer, PHS Regional Office X, Mail Stop RX 20, 2201 Sixth Avenue, Seattle, WA 98121, (206) 553–7997

Appendix II—Healthy Start Communities

Aberdeen—Cynthia Smith, Director, Northern Plains Health Start Project, UND Department of Family Medicine, 501 Columbia Road, Grant Forks, North Dakota 58203, (701) 777–3848

Baltimore—Tom Coyle, Director, Office of Policy and Program Development, Baltimore City Health Department, 303 East Fayette Street, Seventh Floor, Baltimore, Maryland 21202, (410) 396–9994

Birmingham—Ms. Carroll N. Romano, MPA, Director, Medicaid Maternity Waiver Program, Jefferson County Department of Health, P.O. Box 2648, 1400 Sixth Avenue, South, Birmingham, Alabama 35202, (205) 930–1363

Boston—June Cooper, Project Officer, Division of Public Health, Department of Health and Hospitals, 1010 Massachusetts Avenue, 2nd Floor, Boston, Massachusetts 02118, (617) 534–5359

Alonzo Plough, Deputy Commissioner of Department of Public Health, 818 Harrison Avenue, Admin.—500, Boston, Massachusetts 02118, (617) 534–5264

Chicago—Stephen E. Saunders, M.D., M.P.H., Chief, Division of Family Health, Illinois Department of Public Health, 535 West Jefferson Street, Springfield, Illinois 62761

Cleveland—Daisy Alford, Director, Cleveland Department of Public Health, 1925 St. Clair Avenue, Cleveland, Ohio 44144, (216) 664–2324

Detroit—John B. Waller, Jr., Dr. P.H., Chairman, Department of Community

Medicine, Wayne State University, 540 East Canfield, Detroit, Michigan 48201, (313) 557–1033
District of Columbia—Patricia A. Tompkins, Chief, Office of Maternal & Child Health, Commission of Public Health, 1660 L Street, NW, Suite 907, Washington, D.C. 20036, (202) 673–4551
New Orleans—Sheila J. Webb, RN, M.S., Deputy Director, City of New Orleans Department of Health, City Hall, Room 2E10, 1300 Perdido Street, New Orleans, LA 70112, (504) 565–6906
New York—Michelle Drayton, Project Director, 250 Broadway, Room 303, New York, New York 10013, (212) 566–7076
Oakland—Janice Berger, Perinatal Program, Alameda County Health Care Services Agency, 499 Fifth Street, Room 504, Oakland, CA 94607, (510) 208–1018
Philadelphia—Harriet Dichter, Director, Maternal & Infant Health, 500 South Broad Street, Philadelphia, PA 19146, (215) 875–5927
Pittsburgh—Carol Synkewecz, Executive Assistant, Allegheny County Health Department, 3333 Forbes Avenue, Pittsburgh, PA 15213, (412) 578–8003
South Carolina—Roger Poston, Project Director, United Way of South Carolina, 2711 Middleburg Drive, Suite 210, Columbia, South Carolina 29204, (803) 929–1002 (Columbia), (803) 662–1482 (Florence)
Gary—Rebera Elliott Foston, M.D., M.P.H., Health Commissioner, Gary Health Department, 1145 West Fifth Avenue, Gary, IN 46402

[FR Doc. 92–13192 Filed 6–4–92; 8:45 am]
BILLING CODE 4160–15–M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on Friday May 29, 1992.

(Call PHS Reports Clearance Officer on 202–245–2100 for copies of package)

1. 1992 Update of National Survey of Prescription Drug Information Provided to Patients—New—To provide information for current Health and Human Services and the Food and Drug Administration policy initiatives, a national survey of adults age 18 and older will assess the nature and extent of prescription drug information received by patients from health professionals and other sources. This is a repeat of a survey conducted in 1982 and 1984. Respondents: Individuals of households.

Title	Number of respondents	Number of responses per respondent	Average burden per response (hour)
Screener	12,320	1	.0167
Full Survey	1,000	1	.3167
Estimated Total Annual Burden			513

2. HIV/AIDS Dental Reimbursement Program—0915–0151 Dental Schools will apply for reinstatement of documented uncompensated costs of oral health care for HIV infected persons. The Information will be used to determine eligibility and amount of reimbursement under this program. Respondents: Non-profit institutions; Number of Respondents: 150; Number of Responses per Respondent: 1; Average Burden Per Response: 2.5 hours; Estimated Annual Burden: 375 hours.

4. Collection and Evaluation of human Tissues and cells—0925–0152—Epidemiological data is collected to compare the environmental characteristics of non-cancer control autopsy tissues to those of surgically derived cancer cases when analyzing for binding levels of carcinogens, composition of macromoecules complexed with test chemicals, genetic mutations, and susceptibility of tissues to chemically induced transformation and tumorigenesis. Respondents: Individuals or households; Number of Respondents: 10; Number of Responses per Respondent: 1; Average Burden per Response: 0.33 hours; Estimated Annual Burden: 4 hours.

4. 1993–1994 National Health Interview Survey—0910–0214—the National Health Interview Survey, an ongoing survey of the civilian, non-institutionalized population, monitors the Nation's Health. The 1993–1994 NHIS will include supplements on "Disability", "Family Resources", "Immunization", and "AIDS Knowledge and Attitudes". Respondents: Individuals or households; Number of Respondents: 48,500; Number of Responses per Respondent: 1; Average Burden per Response: 2.06 hours; Estimated Annual Burden: 99,808 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated above at the following address: Human Resources and Housing Branch New Executive Office Building, room 3002 Washington, DC 20503.

Dated: May 29, 1992.

Phyllis M. Zucker,

Acting Director, Office of Health Planning and Evaluation.

[FR Doc. 92–12994 Filed 6–4–92; 8:45 am]
BILLING CODE 4160–17–M

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96–511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the **Federal Register** on May 1, 1992.

(Call Reports Clearance Officer on (410) 965–4149 for copies of package)

1. Missing and Discrepant Wage Reports Letter and Questionnaires—0960–0432. The information on forms SSA–L93, SSA–95 and SSA–97 is used by the Social Security Administration to properly post employees' earning records. The respondents are employers with missing and discrepant wage reports.

Number of Respondents: 385,000.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 192,500 hours.

2. Request for Reconsideration-Disability Cessation—0960—0349. The information on form SSA–789 is used by the Social Security Administration in situations in which a claim for disability benefits has been denied and the claimant wishes to file for a reconsideration of that determination. The respondents are claimants for disability benefits under titles II and XVI of the Social Security Act who file for reconsideration.

Number of Respondents: 11,550.

Frequency of Response: 1.

Average Burden Per Response: 12 minutes.

Estimated Annual Burden: 2,310 hours.

3. Statement regarding Student's School Attendance—0960—0113. Form SSA–2434 is used by the Social Security Administration (SSA) in connection with claims for black lung student benefits. The information obtained via this form helps SSA to determine the status of children of coal miners or their widows or brothers of deceased coal miners.

Number of Respondents: 5,340.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 890 hours.

4. Receipt Demonstration Project—Caller Recontact Survey—0960—NEW. The information on form SSA–4358 will be used by the Social Security Administration (SSA) to determine caller satisfaction and reaction to SSA's service of issuing a receipt following a call to the 800 number. The respondents are selected individuals who contact SSA using the toll-free number.

Number of Respondents: 5,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 1,250 hours.

5. Final Regulation Concerning Payment of Certain Travel Expenses—0960–0434. The information required by this regulation is used by the Social Security Administration to reimburse an individual who has been required to travel over 75 miles to appear at a medical examination or disability hearing.

Number of Respondents: 50,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 8,333.

OMB Desk Officer: Laura Oliven.

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: May 18, 1992.

Charlotte Whitenight,

Acting Reports Clearance Officer, Social Security Administration.

[FR Doc. 92–12749 Filed 6–4–92; 8:45 am]

BILLING CODE 4190–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–92–1917; FR–2934–N–81]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact James N. Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20657; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this Notice. Included in the request for review should be the property address

(including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Air Force: John Carr, Realty Specialist, HQ–AFBDA/BDR, Pentagon, Washington, DC 20330–5130; (703) 693–0674; (This is not a toll-free number).

Dated: May 29, 1992.

Paul Roitman Bardack,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 06/05/92

Arizona—Williams Air Force Base

Williams Air Force Base is located in Mesa, Arizona, 85240–5000. All the properties will be excess to the needs of the Air Force on or about September 30, 1993. Properties shown below as suitable/available will be available at that time. The Air Force has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The Base consists of approximately 4,072 acres, 179 Government-owned buildings and 700 residential buildings that have been reviewed by HUD for suitability for use to assist the homeless. The properties that HUD has determined suitable and which are available include various types of housing; office and administrative buildings; recreational, maintenance, and storage facilities; and other more specialized structures.

Suitable/Available Properties

Property Number: 199210096
Type Facility: Housing—700 units of military family housing; 1-story with 2 to 5 bedrooms.

Property Number: 199210097
Type Facility: Temporary Living Quarters—15 buildings; 1, 2, and 3–story structures including dorms and lodging.

Property Number: 199210098
Type Facility: Support and Service Facilities—5 buildings; one 3-story fire station, one 1-story brick chapel, a gate house, a post office and an education center.

Property Number: 199210099
Type Facility: Miscellaneous Facilities—24 buildings; 1 and 2-story structures including a library, bowling center, gym, child care, youth and recreation centers, theater, commissary and stores.

Property Number: 199210100–199210101
Type Facility: Recreation—20 facilities including golf club bldgs., bathhouses, swimming pools, baseball, softball and soccer fields, tennis courts, track, golf course, driving range and a camp.

Property Number: 199210102
Type Facility: Medical Facilities—6 buildings; 1-story block and concrete structures including a hospital, clinics and pharmacy.

Property Number: 199210103
Type Facility: Laboratories—9 buildings; eight 1-story and one 3-story metal and concrete/block structures.

Property Number: 199210104
Type Facility: Flight Training and Admin. Facilities—36 buildings; 1 to 3-story concrete block, wood and metal structures including law centers, offices, classrooms and flight training facilities.

Property Number: 199210105
Type Facility: Warehouse and Storage Facilities—12 buildings; 1-story concrete, wood and steel structures including warehouses and storage bldgs.

Property Number: 199210106
Type Facility: Base Support and Flight Maintenance Facilities—52 buildings; 1-story concrete/steel, concrete/block and steel structures including hangars, maintenance and jet engine shops.

Property Number: 199210107
Type Facility: Hazardous and Explosive Storage—14 buildings; 1-story concrete and concrete/metal structures.

Arkansas—Eaker Air Force Base

Eaker Air Force Base is located in Blytheville, Arkansas 72317–5000. All the properties will be excess to the needs of the Air Force on or about December 15, 1992. Properties shown below as suitable/available will be available at that time. The Air Force has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The base covers 2,700 acres and contains 928 housing units and 199 government-owned buildings. The properties that HUD has determined suitable and which are available include various types of housing; office and administration buildings; indoor and outdoor recreational facilities; warehouses and multi-use buildings; child care centers; maintenance, storage and other more specialized structures.

Suitable/Available Properties

Property Numbers: 199210040–199210042
Type Facility: Housing—818 duplex units with two, three and four bedrooms; wood with brick veneer fronts; 10 single family houses with four and five bedrooms; and 25-4 unit buildings with two story four bedroom units; four playgrounds.

Property Number: 199210045
Type Facility: Office/administration—30 buildings; 188 to 49,000 sq. ft.; one and two story; concrete block, metal, shingle or masonry construction.

Property Numbers: 199210046–199210047
Type Facility: Recreation—20 outdoor areas which includes athletic fields (track, softball, baseball), swimming pools, golf courses, volleyball court, basketball courts, tennis court. Eight indoor facilities which includes gym, theatre, library, bowling, youth and recreation centers, hobby shop; concrete block, masonry or metal/brick construction.

Property Numbers: 199210048–199210055
Type Facility: Temporary living quarters and dorms—8 buildings; 3,414 to 41,000 sq. ft.; one and two story; wood/brick veneer and brick masonry buildings.

Property Numbers: 199210056, 199210072
Type Facility: Warehouses/multi-use buildings—39; metal, concrete block, shingle, wood or plywood frame; one and two story; 64 to 45,960 sq. ft.; includes cold storage facilities, maintenance shops, traffic management facility, storage shed, thrift shops and other specialty type facilities.

Property Numbers: 199210057–199210059
Type Facility: Hospitals—3 buildings; one story concrete block; 1,084 sq. ft. animal clinic; 5,249 sq. ft. dental clinic; and 54,089 sq. ft. composite medical bldg.

Property Numbers: 199210060–199210062
Type Facility: Child care centers—3 buildings; 2,098 to 8,365 sq. ft.; brick, concrete block and hadite block construction.

Property Numbers: 199210063–199210065, 199210073
Type Facility: Stores and services—4 buildings; 4,299 sq. ft. exchange service station; 32,925 sq. ft., one story concrete block exchange sales store; 3,370 sq. ft., one story wood frame packaging store; 38,575 sq. ft., one story concrete block/metal commissary.

Property Number: 199210066
Type Facility: Airfield related buildings—14; 96 to 49,000 sq. ft.; shingle, metal or contrete block structures, e.g. hangars, aircraft general purpose bldgs., jet engine maintenance shops, control centers.

Property Number: 199210068
Type Facility: Vehicle maintenance facilities—3; 2,032 to 29,350 sq. ft.; one story metal frame buildings.

Property Number: 199210069
Type Facility: Fuels/related storage facilities—40 buildings; steel, fiberglass and porcelain type; e.g. service stations, diesel storage, pump stations, jet fuel storage.

Property Number: 199210070
Type Facility: Hazardous storage buildings—6; 96 to 3,000 sq. ft.; one story metal structures.

Property Number: 199210071
Type Facility: Munitions facilities—21 buildings; 412 to 4,864 sq. ft.; concrete block; storage igloos and magazines.

Property Number: 199210074
Type Facility: Fire Station—Building 100; 15,717 sq. ft.; concrete masonry/asbestos cement shingles frame.

Property Number: 199210075
Type Facility: Chapel—Building 525; 17,602 sq. ft.; one story frame with brick veneer.

Property Number: 199210076–199210077
Type Facility: Laboratories—2 buildings; 4,200 sq. ft. precision measurement equipment lab; and 3,775 sq. ft. audio-visual photo lab.

Property Number: 199210078
Type Facility: Bank; 2,367 sq. ft.; one story concrete block; lease restrictions.

Property Number: 199210079

Type Facility: Land; 1,962 acres; restrictive agricultural lease.

Unsuitable Properties

Property Number: 199210067
Type Facility: Detached latrines—3; 264 sq. ft. concrete block structures.
Property Number: 199210043
Type Facility: Housing—23 buildings; cracked foundations, therefore, structural deficiencies.

California—George Air Force Base

George Air Force Base is located in San Bernardino, California 92394–5000. All the properties will be excess to the needs of the Air Force on or about December 31, 1992. The Air Force has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The Base covers 5,340 acres and contains 732 individual properties that have been reviewed by HUD for suitability for use to assist the homeless. The 668 properties that HUD has determined suitable include various types of housing; office and administrative buildings; recreational, maintenance, and storage facilities; and other more specialized structures. The Air Force has determined that all suitable properties are available for use to assist the homeless.

Extensive assistance, including maps, tours, and details on specific properties, is available for interested homeless assistance providers at the Base; interested parties should contact Lt. Col. Zernow at (619) 269–2020.

Suitable/Available Properties

Property Numbers: 199120001–199120420
Type Facility: Housing—420 buildings with a total of 1,636 dwelling units; buildings have 1, 2, 3, 4, 6, or 8 units each; wood/stucco frame construction; possible asbestos.
Property Numbers: 199120421–199120473
Type Facility: Office/administration—53 buildings ranging in size from 200 sq. ft. on 1 floor to 56,600 sq. ft. on 3 floors; wood or concrete block construction; several trailers; possible asbestos.
Property Numbers: 199120474–199120505
Type Facility: Recreation—22 buildings including theatre, recreation center, bowling center, gym, library, craft center, shop, youth center, golf course buildings, pools, bathhouses; 7 baseball, softball, and soccer fields; track; golf course; driving range; possible asbestos.
Property Numbers: 199120506–199120547
Type Facility: Temporary living quarters, dorms, lodges, and ancillary sheds—42 buildings; 1 and 2 story wood, concrete, and concrete block structures; 4700 sq. ft. to 25000 sq. ft. for living quarters; 380 sq. ft. to 2400 sq. ft. for sheds; possible asbestos.
Property Numbers: 199120548–199120587
Type Facility: Aircraft and airport related facilities—40 structures including hangers, shops, tower, terminal, lab, docks, storage, control center, navigation station, runways; sizes up to 86,000 sq. ft.; possible asbestos.
Property Numbers: 199120588–199120608
Type Facility: Maintenance and engineering facilities—21 buildings; concrete and wood; 200 sq. ft. to 17,000 sq. ft.; possible asbestos.
Property Numbers: 199120609–199120618
Type Facility: Training facilities—10 buildings; education center and 9 classroom buildings; concrete and wood; 1200 sq. ft. to 16,800 sq. ft.; possible asbestos.
Property Numbers: 199120619–199120630
Type Facility: Stores and services—12 buildings; 10 stores and 2 gas stations; wood and concrete; 1800 sq. ft. to 30,700 sq. ft.; possible asbestos.
Property Numbers: 199120631–199120632
Type Facility: Chapels—2 buildings; 4800 sq. ft. wood; 24,100 sq. ft. concrete; possible asbestos.
Property Number: 199120633
Type Facility: Hospital—3 story, concrete block, 147,000 sq. ft.; possible asbestos.
Property Numbers: 199120634–199120635
Type Facility: Fire facilities—2 buildings; fire station and command center; possible asbestos.
Property Numbers: 199120636–199120638
Type Facility: Audio visual and photo lab—3 buildings; wood and concrete; 1800 sq. ft. to 2300 sq. ft.; possible asbestos.
Property Numbers: 199120639–199120645
Type Facility: Vehicle shops—7 buildings; concrete; 74 sq. ft. to 33,000 sq. ft.; possible asbestos.
Property Numbers: 199120646–199120655
Type Facility: Misc.—10 buildings; wood and concrete; 1 story; dining halls, mess halls, food service, child care center; 1800 sq. ft. to 19,000 sq. ft.; possible asbestos.
Property Numbers: 199120656–199120666
Type Facility: Communications/electronic—11 buildings; concrete block and wood; 1 story shops and sheds; 108 sq. ft. to 10,200 sq. ft.; possible asbestos.
Property Numbers: 199120667–199120678
Type Facility: Warehouses—12 buildings; 1124 sq. ft. to 70,000 sq. ft.; wood, concrete, and concrete block; possible asbestos.

Unsuitable Properties

Property Number: 199120679
Type Facility: Small arms
Reason: Within 2000 ft. of flammable or explosive material.
Property Numbers: 199120680–199120687
Type Facility: Hazardous storage facilities—8 buildings
Reason: Within 2000 ft. of flammable or explosive material.
Property Numbers: 199120688–199120713
Type Facility: Explosives and munitions facilities—26 buildings
Reason: Within 2000 ft. of flammable or explosive material.
Property Numbers: 199120714–199120732
Type Facility: Fuel facilities—19 structures
Reason: Within 2000 ft. of flammable or explosive material.

California—Mather Air Force Base

Mather Air Force Base is located in Sacramento County, California 95655–5000. All the properties will be excess to the needs of the Air Force on or about September 30, 1993. Properties shown below as suitable/available will be available at that time. The Air Force has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The Base consists of approximately 5715 acres, 315 Government-owned buildings and 1271 housing units that have been reviewed by HUD for suitability for use to assist the homeless. The properties that HUD has determined suitable and which are available include various types of housing; office and administrative buildings; recreational, maintenance, and storage facilities; and other more specialized structures.

Suitable/Available Properties

Property Numbers: 199210017–199210020
Type Facility: Housing—207 buildings/414 units Wherry duplexes (two to three bedrooms); 857 family houses (one to four bedrooms); buildings have reinforced concrete block, wood and stucco frame construction; presence of asbestos.
Property Number: 199210021
Type Facility: Temporary Living Quarters—18 buildings; one, two, and three story wood, concrete block and stucco structures; presence of asbestos.
Property Number: 199210022
Type Facility: Office/Administration—60 buildings; one, two and three story structures; presence of asbestos.
Property Number: 199210023
Type Facility: Recreation—32 facilities including theater, gymnasium, library, bowling alley, recreation center, arts and crafts center, youth center, pools, bath houses, museum buildings; presence of asbestos.
Property Number: 199210024
Type Facility: Aircraft and Airport Related Facilities—33 buildings; one to two story structures including hangars, storage facilities and maintenance shops; presence of asbestos.
Property Number: 199210025
Type Facility: Maintenance and Engineering Facilities—36 buildings; one story structures including storage, shop and maintenance buildings; presence of asbestos.
Property Number: 199210026
Type Facility: Training Facilities—15 buildings; one to two story concrete, wood and metal classroom/education buildings; presence of asbestos.
Property Number: 199210027
Type Facility: Stores and Services—7 buildings; one story structures including stores, service station exchange and cold storage building; presence of asbestos.
Property Number: 199210028
Type Facility: Chapels—2 buildings; one story concrete block and masonry concrete structures; presence of asbestos.

Property Number: 199210029
Type Facility: Fire Facilities—2 fire facilities and 2 fire stations; presence of asbestos.
Property Number: 199210030
Type Facility: Audio Visual—3 buildings; one story photo lab and training aid shops; presence of asbestos.
Property Number: 199210031
Type Facility: Miscellaneous—6 buildings; one story child care centers, correction facility, dining and mess halls; presence of asbestos.
Property Number: 199210032
Type Facility: Storage Facilities—61 buildings; one story metal, steel, wood or concrete storage buildings or sheds; presence of asbestos.
Property Number: 199210033
Type Facility: Warehouses—7 buildings; one to two story structures; presence of asbestos.
Property Number: 199210034
Type Facility: Vehicle Shops—6 buildings; one story concrete block, wood, steel frame and metal shops; presence of asbestos.
Property Number: 199210035
Type Facility: Traffic Check House—1 building; two story concrete block structure.
Property Number: 199210036
Type Facility: Fuel Facilities—8 buildings; one story structures.
Property Number: 199210037
Type Facility: Explosives and Munitions Facilities—5 buildings; one story concrete or concrete block storage structures.
Property Number: 199210038
Type Facility: Hazardous Storage Facilities—11 buildings; one story metal storage structures.
Property Number: 199210039
Type Facility: Land—Recreation Areas and Airfield Properties including softball/football/soccer fields, running track, riding stables, golf course, taxiway and runways, (approximately 5716 acres).

Illinois—Chanute Air Force Base

Chanute Air Force Base is located in Champaign, Illinois, 61868. All the properties will be excess to the needs of the Air Force on or about September 30, 1993. Properties shown below as suitable/available will be available at that time. The Air Force has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The Base consists of approximately 2,174 acres, 164 Government-owned buildings and 463 residential buildings that have been reviewed by HUD for suitability for use to assist the homeless. The properties that HUD has determined suitable and which are available include various types of housing; office and administrative buildings; recreational, maintenance, and storage facilities; and other more specialized structures.

Suitable/Available Properties

Property Number: 199210139
Type Facility: Housing—463 houses with 1 to 8 units, brick and wood structure, possible asbestos.
Property Number: 199210140
Type Facility: Temporary Living Quarters—24 buildings; 1 to 4-story dormitories and temporary living facilities, possible asbestos.
Property Number: 199210141
Type Facility: Medical Facilities—2 buildings; 4-story concrete hospital and a 1-story concrete dental clinic, possible asbestos.
Property Number: 199210142
Type Facility: Storage-Warehouses—28 buildings; concrete block, brick, metal and wood structures including supply and training bldgs., need repairs.
Property Number: 199210143
Type Facility: Maintenance Bldgs.—15 buildings; 1-story maintenance facilities and shops, possible asbestos.
Property Number: 199210144
Type Facility: Engine Test Cells/Warehouses—2 buildings; 1-story concrete storage/maintenance facilities, possible asbestos.
Property Number: 199210145
Type Facility: Gas Stations—2 buildings; 1-story gas stations.
Property Number: 199210146
Type Facility: Training Facilities—22 buildings; 1 to 4-story structures including training bldgs., classrooms, and labs, possible asbestos.
Property Number: 199210147
Type Facility: Retail Stores—5 buildings; 1-story brick and wood structures including 4 branch exchanges and 1 commissary, possible asbestos.
Property Number: 199210148
Type Facility: Chapel/Chapel Center—3 buildings; one 2-story brick chapel center and two 1-story wood chapels, possible asbestos.
Property Number: 199210149
Type Facility: Fire Station—1 building; 2-story brick fire station, possible asbestos.
Property Numbers: 199210150–199210151
Type Facility: Recreation—49 facilities; including gym, library, theater, golf bldgs., youth, child, bowling and recreation centers, track, softball fields, tennis courts, golf course and driving range.
Property Number: 199210152
Type Facility: Administration—26 facilities; wood, brick and concrete structures including a band center, an education center, admin. bldgs. and offices, needs rehab, possible asbestos.
Property Number: 199210153
Type Facility: Bldg. 386/Band Bldg.—31803 sq. ft., 2-story concrete block/wood band center, needs rehab.

Louisiana—England Air Force Base

England Air Force Base is located in Alexandria, Louisiana 71311–5000. All the properties will be excess to the needs of the Air Force on or about December 15, 1992. Properties shown below as suitable/available will be available at this time. The Air Force has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The base covers 2,282 acres and contains 294 housing units and 193 government-owned buildings. The properties that HUD has determined suitable and which are available include one and two story family housing; office and administration buildings; recreational facilities and areas; educational, business and commercial buildings; maintenance, storage and other specialized structures.

Suitable/Available Properties

Property Numbers: 199210080–199210081
Type Facility: Housing—294 buildings with 598 dwelling units; one and two story; wood or masonry frame; 1,190 to 6,701 sq. ft.
Property Number: 199210082
Type Facility: Office and administration—28 buildings; 228 to 40,006 sq. ft.; one and two story; wood, brick, block or masonry frame, presence of asbestos in several structures.
Property Numbers: 199210083–199210084
Type Facility: Recreation—18 facilities and 10 parcels of land; i.e. swimming pools, gym, threatre, riding stables, bowling, library, golf course, arts and crafts center, baseball, soccer, and softball fields, track and tennis court; presence of asbestos in some structures.
Property Number: 199210085
Type Facility: Dorms and dining areas—14 buildings; 3,902 to 25,715 sq. ft.; brick or masonary frame; one, two, and three story; presence of asbestos in some structures; includes dorms, officers club, NCO club and dining hall.
Property Number: 199210086
Type Facility: Educational/training—14 buildings; 740 to 45,716 sq. ft.; wood or masonry frame; one and two story; presence of asbestos in a few structure; includes classrooms, child care center, school, education office and field training facility.
Property Number: 199210087
Type Facility: Hospitals—3 related buildings—medical storage, hospital and bio environment; metal or masonry frame; presence of asbestos in hospital.
Property Number: 199210088
Type Facility: Business and Commercial—6 buildings; 1,925 to 34,326 sq. ft.; masonry frame and possible asbestos in the commissary; other structures include mini mall, photo lab, post office, service station and base package store.
Property Number: 199210089
Type Facility: Storage/Warehouse—38 buildings including igloos, supply and equipment warehouses, records storage, commissary warehouse, retail exchange warehouse, cold storage and open storage facilities; 225 to 60,960 sq. ft.; one story; wood, block, metal, brick or concrete construction; presence of asbestos in several structures.
Property Number: 199210090

Type Facility: Maintenance shops—20 buildings; 228 to 34,176 sq. ft.; one story; block, metal or steel construction; presence of asbestos in several structures.
Property Number: 199210091
Type Facility: Airfield related faciliites—36 buildings including vehicle fuel station, petroleum operations building, aircraft general purpose, control center, shop avionics, air freight terminal, etc.; 240 to 79,537 sq. ft.; block, metal, wood, concrete or masonry frame; presence of asbestos in some structures.
Property Number: 199210092
Type Facility: Fire facility—Building 500; 13,658 sq. ft.; one story masonry frame; presence of asbestos.
Property Number: 199210093
Type Facility: Chapel—Building 1801; 11,484 sq. ft.; one story masonry frame.
Property Number: 199210094
Type Facility: Land, airfield, runways—25 parcels; 10 to 398,099 square yarads; concrete or asphalt.

Unsuitable Properties

Property Number: 199210095
Type Facility: Fuel storage containers—14 hazardous storage containers.

New Hampshire—Pease Air Force Base

Pease Air Force Base is located in Rockingham County, New Hampshire, 03803. The Base consists of approximately 4,257 acres, numerous Government-owned buildings and residential buildings that have been reviewed by HUD for suitability for use to assist the homeless. The New Hampshire Air National Guard is expected to continue operations on a portion of the Base. All suitable/available properties listed below are vacant.

Suitable Buildings

Property Numbers: 189040321–189040323
Type Facility: 2 open mess and 1 dining hall.
Property Number: 189040326
Type Facility: 1 bachelor quarters buildings.
Property Number: 189040327
Type Facility: Hospital heat plant.
Property Number: 189040328
Type Facility: Hospital.
Property Number: 189040329
Type Facility: Trailer (hospital office space).
Property Numbers: 189040330–189040322
Type Facility: 3 training facilities.
Property Numbers: 189040333–189040334
Type Facility: 2 child care facilities.
Property Number: 189040335
Type Facility: Fire station.
Property Numbers: 189040059–189040148, 189040304–189040319
Type Facility: 106 4-unit residences.
Property Number: 189040352
Type Facility: 1 chapel.
Property Number: 189040383
Type Facility: Single family residence.
Property Number: 189040384
Type Facility: Rod and gun club.
Property Numbers: 189040387–189040394
Type Facility: 8 dormitories.
Property Numbers: 189040395–189040404
Type Facility: 10 residences with detached garage.
Property Numbers: 189040405–189040467
Type Facility: 63 2-unit residences with detached garage.
Property Numbers: 189040468–189040471
Type Facility: 4 6-unit residences with attached garage.
Property Numbers: 189040472–189040561
Type Facility: 90 detached housing storage sheds.
Property Number: 189040726
Type Facility: 1 communications facility.
Property Numbers: 189040737–189040740, 189040742
Type Facility: 5 recreational facilities.
Property Numbers: 189040743–189040751
Type Facility: 9 small concrete munitions storage buildings.
Property Numbers: 189040763–189040768, 189040770–189040771
Type Facility: 9 administrative facilities.
Property Numbers: 189040774–189040775, 189040777–189040778, 189040787, 189040790, 189040792–189040793, 189040795–189040805
Type Facility: 19 miscellaneous buildings used for office, administrative, educational, laboratory, traffic check, storage, maintenance, and other purposes.
Property Number: 189010535
Type Facility: Temp. lodging facility, Bldg. 94, Rockingham Drive.

Unsuitable Properties

Property Number: 189040360
Type Facility: Golf course
Reason: Within airport runway clear zone.
Property Number: 189010536
Type Facility: Vehicle fuel station
Reason: Within 2000 ft. of flammable or explosive material.
Property Numbers: 189010537, 189010538
Type Facility: Jet fuel pumphouses
Reason: Within 2000 ft. of flammable or explosive material.
Property Number: 189010539
Type Facility: Weapons storage area
Reason: Within 2000 ft. of flammable or explosive material.
Property Numbers: 189040354–189040359
Type Facility: Bldgs. 399–401, 403, 405, 407
Reason: Within airport runway clear zone.
Property Numbers: 189040361, 189040369, 189040373
Type Facility: Industrial facilities
Reason: Within 2000 ft. of flammable or explosive material.
Property Number: 189040717
Type Facility: Utility plant
Reason: Other.
Property Numbers: 189040772, 189040794
Type Facility: Bus shelters
Reason: Other.
Property Numbers: 189040806, 189040825–189040829
Type Facility: Sewage pump stations
Reason: Other.
Property Numbers: 189040820, 189040822–189040824
Type Facility: Pump stations
Reason: Other.
Property Numbers: 189040830–189040851
Type Facility: Power stations
Reason: Other.

South Carolina—Myrtle Beach Air Force Base

Myrtle Beach Air Force Base is located in Horry County, South Carolina 29579–5000. All the properties will be excess to the needs of the Air Force on or about March 31, 1993. Properties shown below as suitable/available will be available at that time. The Air Force has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The base covers approximately 3,800 acres, 190 Government-owned buildings and 448 residential buildings with 800 units of housing that have been reviewed by HUD for suitability for use to assist the homeless. The properties that HUD has determined suitable and which are available include various types of housing; office and administrative buildings; recreational, maintenance, and storage facilities; and other more specialized structures.

Suitable/Available Properties

Property Number: 199210001
Type Facility: Housing—448 buildings with a total of 800 dwelling units; two, three, and four bedrooms single family dwellings and duplexes with attached carports.
Property Number: 199210002
Type Facility: Dormitories/Quarters—13 buildings; two to three story masonry and block structures.
Property Number: 199210003
Type Facility: Miscellaneous—14 buildings; one to two story structures including a chapel, theater, recreation center, child care centers, retail sales stores and dining hall.
Property Number: 199210004
Type Facility: Hospital—1 three story base hospital and 6 one story medical support buildings.
Property Number: 199210005
Type Facility: Office/Administration—53 buildings; one to two story modular, block, wood and brick structures.
Property Numbers: 199210006–199210008
Type Facility: Recreation—15 buildings and land including bath houses, bowling center, gymansium, golf course buildings, three soccer fields, six tennis courts, three softball fields, four youth ball fields, track, campground, golf course and driving range.
Property Number: 199210009
Type Facility: Utility Type Facilities—45 buildings; one story structures including warehouses, shops and sheds.
Property Number: 199210010
Type Facility: Security—3 police buildings;

one story masonry structures including a jail.

Property Number: 199210011
Type Facility: Storage—15 buildings; one story metal, concrete and masonry ammunition storage structures.

Property Numbers: 199210012–199210013
Type Facility: Airfield and Related Properties—25 support buildings and land including hangars, maintenance shops, fire station, eight-story control tower, runways, taxiways and aprons.

Property Numbers: 199210014–199210015
Type Facility: Land—approximately 17 acres used as a mobile home park and 1678 acres of forest.

Unsuitable Properties

Property Number: 199210016
Type Facility: Small Arms Building
Reason: Extensive Deterioration.

Texas—Carswell Air Force Base

Carswell Air Force Base is located in Tarrant County, Texas, 76127. All the properties will be excess to the needs of the Air Force on or about September 30, 1993. Properties shown below as suitable/available will be available at that time. The Air Force has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The Base consists of approximately 2,308 acres, 214 Government-owned buildings and 352 residential buildings that have been reviewed by HUD for suitability for use to assist the homeless. The properties that HUD has determined suitable and which are available include various types of housing; office and administrative buildings; recreational, maintenance, and stroage facilities; and other more specialized structures.

Suitable/Available Properties

Property Numbers: 199210108–199210122
Type Facility: Housing—352 military family residences; 1- and 2-story wood frame, concrete and brick/wood buildings.

Property Number: 199210123
Type Facility: Dormitories—7 buildings; 3- and 4-story concrete block dorms.

Property Number: 199210124
Type Facility: Temporary Living Quarters—6 buildings; 1- and 2-story brick and frame lodging facilities.

Property Number: 199210125
Type Facility: Administration Facilities—45 buildings; 1- to 4-story concrete block, brick, metal and wood structures including education centers, child care, clinics and admin. bldgs.

Property Number: 199210126
Type Facility: Recreation Facilities—13 buildings; metal, concrete block, brick and wood structures including golf club equip. houses, bathhouse, gym, bowling, youth and recreation centers and NCO clubs.

Property Number: 199210127
Type Facility: Recreation Areas—14 areas; approximately 172 acres including golf course, riding stables, playground and picnic area, camps and tennis courts.

Property Numbers: 199210128–199210130
Type Facility: Miscellaneous Facilities—80 buildings; 1-story metal, concrete, block, wood, and brick structures including maintenance and storage bldgs., shops, warehouses, sheds and a commissary.

Property Number: 199210131
Type Facility: Facility 1506—24,000 sq. ft., 1-story brick dining hall.

Property Number: 199210132
Type Facility: Facility 3000—345,186 sq. ft., 5-story concrete hospital.

Property Number: 199210133
Type Facility: Bank/Credit Union—2 buildings; a 1-story concrete bank and a 2-story brick credit union.

Property Number: 199210134
Type Facility: Facility 1838—8790 sq. ft., 1-story brick chapel.

Property Number: 199210135
Type Facility: Facility 1845—9967 sq. ft., 1-story brick theater.

Property Number: 199210136
Type Facility: Fuel Stations—2 buildings; 1-story metal and brick/metal vehicle fuel and exchange service stations.

Property Number: 199210137
Type Facility: Hazardous Storage and Igloos—40 buildings; 4 metal and concrete block hazardous storage bldgs. and 36 concrete igloo storage bldgs.

Property Number: 199210138
Type Facility: Airport Related Areas—26 areas; approximately 205 acres including runways, aprons, taxiways and pads.

Maine—Loring Air Force Base

Suitable/Available Properties

Buildings

Bldgs. 1–16
Family Housing Annex, Loring Air Force Base
U.S. Route #1
Caswell, ME, Aroostook, Zip: 04750–
Federal Register Notice Date: 01/31/92
Property Numbers 189010590–189010605
Status: Excess
Comment: 1116 sq. ft. each; 1 story frame residence; no utilities; asbestos and radon tests pending; fuel tanks removed; sewage line needs repair.

Colorado—Lowry Air Force Base

Suitable/Available Properties

Land
NTMU—Partial Area
Lowry Air Force Base
Denver, CO, Denver, Zip: 80230–5000
Federal Register Notice Date: 01/31/92
Property Number: 189010254
Status: Excess
Location: West of Aspen Terr. housing area and South of (AFAFC) along the base boundary
Comment: Approximately 20 acres; sloping parts in the area.

[FR Doc. 92–12949 Filed 6–4–92; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-060-02-7122-09-6514]

Intent to Prepare an Environmental Impact Statement (EIS) on a Proposed Gold Mining/Processing Operation

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the Bureau of Land Management (BLM) will be directing the preparation of an EIS to be prepared by a third party contractor on the impacts of a proposed gold mining/processing operation, the Oro Cruz Operation of the American Girl Project, on public lands in Imperial County in southern California. Comments are being requested to help identify significant issues or concerns related to the proposed action, to determine the scope of the issues (including alternatives) that need to be analyzed, and to eliminate from detailed study those issues that are not significant. All comments recommending that the EIS address specific environmental issues should contain supporting documentation.

DATES: For Scoping Meetings and Comments: Public scoping meetings will be held on the following dates: 7 p.m., Tuesday, June 30, 1992, at the El Centro Community Center, 375 South First Street, El Centro, California 92243, (619 337–4555); 7 p.m., Wednesday, July 1, 1992, at the Best Western Yuma Inn Suites, Palm Canyon Room, 1450 Castle Dome Avenue, Yuma 85365, (602) 783–8341. Written comments must be filed no later than Friday, July 17, 1992.

ADDRESSES: Written comments should be addressed to Area Manager, Bureau of Land Management, El Centro Resource Area, 333 South Waterman Avenue, El Centro, California 92243–2298, ATTN: Thomas Zale.

FOR FURTHER INFORMATION CONTACT: Thomas F. Zale (619) 352–5842.

SUPPLEMENTARY INFORMATION: A Plan of Operation (POO) has been submitted to the El Centro Area Office of the BLM describing the proposed Oro Cruz gold mining/processing operation. The POO was submitted in accordance with 43 CFR 3809 by the American Girl Mining Joint Venture (AGMJV), the project proponent. The proposed Oro Cruz operation involves both underground and surface mine development, and is the third component of the overall American Girl Project, which includes

the previously approved American Girl Canyon and Padre Madre operations.

The proposed Oro Cruz operation is located in the Cargo Muchacho Mountains on unpatented lode and placer mining claims, primarily on land administered by BLM in Township 15 South, Range 21 East, San Bernardino Meridian, Imperial County, California. The project is about 15 miles northwest of Yuma, Arizona and about 40 miles east-northeast of El Centro, California.

The American Girl Project currently consists of two components: the Padre Madre operation and the American Girl Canyon operation. The American Girl Canyon operation is currently in the fourth year of a planned eleven year operation. Recent exploration activities have led to the acquisition and exploration of the Oro Cruz property, located approximately 2.5 miles north of the American Girl Canyon facilities. Because of AGMJV's ability to develop the Oro Cruz property in conjunction with the American Girl Canyon operation, the proposed Oro Cruz operation would consist of mining and waste rock disposal facilities, a heap leach facility, and miscellaneous roads and buildings. Ore crushing and milling would be conducted at the existing American Girl Canyon facilities.

The proposed Oro Cruz operation would last for about 4.5 years. Surface mining would occur at the Oro Cruz operation for two years, with 3 million tons of ore and 9 million tons of waste rock being produced. The underground mining would result in 500,000 tons of ore being produced. Higher and lower grade ores would be segregated during the mining and treated separately for processing. Tailings from mill processing would be managed in the same manner as the in the current operation. The lower grade ore would be hauled to one or more of three optional sites for processing by heap leaching.

The proposed Oro Cruz operation would result in 207 acres of surface disturbance. This includes a 50 acre area for a haul road between the American Girl Canyon and Oro Cruz properties. If the Oro Cruz operation were approved as proposed, the cumulative area of direct impact from the three American Girl Project operations would be 825 acres.

A tentative project schedules as follows:

Begin Public Comment/Scoping Period—June 1992
Hold Public Scoping Meetings—June/July 1992
File Drat EIS—December 1992
Hold Public Meetings on Draft EIS—January 1993
File Final EIS—June, 1993
File Record of Decision—July 1993
Complete Licensing and Permitting—September 1993
Begin Project Construction—Fall 1993
Begin Project Operation—Winter 1994

Dated: June 1, 1992.

G. Ben Koski,

Area Manager.

[FR Doc. 92-13175 Filed 6-4-92; 8:45 am]

BILLING CODE 4310-40-M

[UT-040-02-4830-12]

Cedar City District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the Cedar City District Advisory Council.

SUMMARY: Notice is hereby given in accordance with Public Law 92-463 of a meeting of the Cedar City District Advisory Council. This meeting will consist of a field trip to western Beaver County to view the West Desert elk and wild horse use area, associated livestock, and other resource management activities. Other agenda discussion items will include the Tenneco Mine expansion plans in western Washington County, plus an update of district land use planning activities.

DATES: July 17, 1992. The field trip will begin at 8:30 a.m. at the Cedar City District Office, 176 East D.L. Sargent Drive, Cedar City, Utah.

FOR FURTHER INFORMATION CONTACT: Gordon R. Staker, District Manager, Cedar City District, 176 East D.L. Sargent Drive, Cedar City, Utah 84720. Telephone: 801-586-2401.

SUPPLEMENTARY INFORMATION: Advisory Council Meetings are open to the public. Interested persons may make oral statements or file written statements for the Council's consideration. Anyone wishing to make a statement notify the District Manager or the Public Affairs Officer by Tuesday, July 14, 1992. A time limit may be established by the District Manager. Persons attending the field trip should bring their own transportation and lunch.

Dated: May 28, 1992.

Gordon R. Staker,

District Manager.

[FR Doc. 92-13178 Filed 6-4-92; 8:45 am]

BILLING CODE 4310-DQ-M

[CA-060-7122-10-6516; CA-30093]

Realty Action; Proposed Exchange of Public Lands in Imperial County, CA

AGENCY: Bureau of Land Management, Interior.

SUMMARY: The Bureau of Land Management proposes to exchange public land in order to achieve more efficient management of the public land through consolidation of ownership and the acquisition of unique natural resource lands. All or part of the following described federal lands are being considered for disposal via exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

San Bernardino Base & Meridian, Imperial County, California

T. 11 S., R. 15 E.:
Sec. 24: All;
T. 11 S., R. 16 E.:
Sec. 30: lots 3-18, E½;
Sec. 32: All
T.12 S., R.16 E.:
Sec. 4: lots, 3,4,5,6,S½N½, N½NE¼SW¼, SE¼NE¼SW¼, N½SE¼, N½SW¼SE¼, SE¼SW¼SE¼, SE¼SE¼;
Sec. 10: NE¼NE¼, S½NE¼, N½NW¼, NE¼SW¼, NW¼, N½SE¼,NW¼, SE¼SE¼NW¼, NE¼SE¼, N½NW¼SE¼, SE¼NW¼SE¼, NE¼SE¼SE¼;
Sec. 14: NE¼, NE¼SE¼SE¼, NE¼SE¼, N½NW¼SE¼, N½SE¼NW¼, SE¼SE¼NW¼, NE¼NW¼, N½NW¼NW¼, SE¼NW¼NW¼;
Comprising approximately 3,376.28 acres.

Final determination on disposal will await completion of an environmental analysis. The proposed exchange is consistent with the Bureau's land use planning objectives. Lands being proposed for exchange will be conveyed by the United States subject to the following reservations, terms and conditions:

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States, under the act of August 30, 1890 (43 U.S.C. 945).

2. Those rights for an existing Railroad Grant within Sec. 32, T. 11S., R. 16E. and Sec. 14, T. 12S., R. 16E. (SO 4/14/1953, SO 10/1/1953).

3. All valid existing rights of record.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this Notice shall segregate the affected public lands from appropriation under the public land laws, including the mining laws, except exchange pursuant to section 206 of the Federal Land Policy and Management act of 1976.

The segregation of the above-described land shall terminate upon issuance of a document conveying title

to such lands or upon publication in the Federal Register of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

For a period of forty-five (45) days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the Area Manager, El Centro Resource Area Office, 333 South Waterman Avenue, El Centro, California 92243. Objections will be reviewed by the District Manager who may sustain, vacate, or modify this reality action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: June 1, 1992.

G. Ben Koski,

Area Manager,

El Centro Resource Area.

[FR Doc. 92-13176 Filed 6-4-92; 8:45 am]

BILLING CODE 4310-40-M

NATIONAL PARK SERVICE

National Register of Historic Places Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 23, 1992. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by June 22, 1992.

Carol D. Shull,

Chief of Registration, National Register.

COLORADO

Arapahoe County

Curtis School, 2349 E. Orchard Rd., Greenwood Village, 92000808

Denver County

Grimm, S.A., Block, 2031-2033 Curtis St., Denver, 92000807

Larimer County

Robertson, T.H., House, 420 W. Mountain Ave., Fort Collins, 92000811

Moffat County

State Armory, 590 Yampa Ave., Craig, 92000810

Otero County

North La Junta School, Jct. of CO 109 and CO 194, La Junta, 92000809

GEORGIA

Jackson County

Shields—Etheridge Farm, Jct. of GA 319 and Co. Rd. 125, approximately 5 mi. SW of Jefferson, Jackson vicinity, 92000814

MASSACHUSETTS

Bristol County

Wesport Point Historic District, Roughly, Main St. from Charles St. to W. Branch, Westport R., including Cape Bial and Valentine Lns., Westport, 92000815

NEBRASKA

Fillmore County

Strang School District No. 36, Main St., Strang, 92000805

NEW JERSEY

Hunterdon County

Potterstown Rural Historic District, Along Potterstown and Hall's Mill Rds. and I-78, Readington and Clinton Townships, Potterstown, 92000806

VERMONT

Windsor County

Morris, Gen. Lewis R., House (Agricultural Resources of Vermont MPS), 456 Old Connecticut River Rd., Springfield, 92000813

WISCONSIN

Barron County

Cumberland Public Library (Public Library Development in Wisconsin MPS), 1305 Second Ave., Cumberland, 92000804

Chippewa County

Z.C.B.J. Hall, WI 27, 7 mi. N of Cadott, Arthur, 92000812

[FR Doc. 92-13014 Filed 6-4-92; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-571 (Preliminary)]

Professional Electric Cutting and Sanding/Grinding Tools From Japan

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a preliminary antidumping investigation.

SUMMARY: The Commnisison hereby gives notice of the institution of preliminary antidumping investigation No. 731-TA-571 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishement of an industry in the United States is materially retarded, by reason of imports from Japan of certain tools of a type suitable for industrial or professional use,[1] that are alledged to be sold in the United States at less than fair value. The Commission must complete a preliminary antidumping investigation in 45 days, or in this case by July 13, 1992.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: May 29, 1992.

FOR FURTHER INFORMATION CONTACT: Larry Reavis (202-205-3185), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on May 29, 1992, by the Black & Decker Corp., Towson, MD.

Participation in the Investigation and Public Service List.

Persons (other than petititoners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the Federal Register. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives,

[1] For purposes of this investigation, such tools include the following types, provided for in the indicated subheadings of the Harmonized Tariff Schedule of the United States (HTS): New sawing or cutting-off machines, valued under $3,025 each, of HTS subheading 8461.50.00; woodworking machines (except sawmill machines, radial arm saws, and table saws) valued under $3,025 each, of HTS subheading 8465.91.00; electromechanical saws (except chain saws) for working in the hand with self-contained electric motor, of HTS subheading 8508.20.00; and electromechanical grinders, polishers, sanders, routers, planers, and other electromechanical tools (except screwdrivers, nut-runners, impact wrenches, grass and weed trimmers/edgers, electopneumatic rotary and percussion hammers, and electric scissors) for working in the hand with self/contained electric motor, of HTS subheading 8508.80.00.

who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List.

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this preliminary investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on June 19, 1992, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Larry Reavis (202–205–3185) not later than June 18, 1992, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before June 24, 1992, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules.

Issued: June 2, 1992.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 92–13231 Filed 6–4–92; 8:45 am]

BILLING CODE 7020–02–M

[Investigations Nos. 731–TA–548, 550, and 551 (Preliminary)]

Sulfur Dyes from China, India, and the United Kingdom

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from China, India, and the United Kingdom of sulfur dyes,[3] provided for subheadings 3204.15.10, 3204.15.20, 3204.15.30, 3204.15.35, 3204.15.40, 3204.15.50, 3204.19.30, 3204.19.40, and 3204.19.50 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On April 10, 1992, a petition was filed with the Commission and the Department of Commerce by Sandoz Chemicals Corporation, Charlotte, NC, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of sulfur dyes from China, India, and the United Kingdom.[4] Accordingly, effective April 10, 1992, the Commission instituted antidumping investigations Nos. 731–TA–548, 550 and 551 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of April 17, 1992 (57 FR 13756). The conference was held in Washington, DC, on May 1, 1992, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on May 26, 1992. The views of the Commission are contained in USITC Publication 2514 (May 1992), entitled "Sulfur dyes from China: Determinations of the Commission in Investigations Nos. 731–TA–548, 550, and 551 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

By Order of the Commission.

Issued: June 1, 1992.

Kenneth R. Mason,

Secretary.

[FR Doc. 92–13184 Filed 6–4–92; 8:45 am]

BILLING CODE 7020–02–M

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[1] The record is defined in § 207.2(f) of the Commission's rules of practice and procedure (19 CFR 207.2(f)).

[2] Vice Chairman Brunsdale determined that two like products exist and voted in the negative on sulfur dyes in the pre-reduced, liquid "ready-to-dye" form and in the affirmative on all other sulfur dyes.

[3] Sulfur dyes are synthetic organic coloring matter containing sulfur. Sulfur dyes are obtained by high-temperature sulfurization of organic material containing hydroxy, nitro or amino groups, or by reaction of sulfur and/or alkaline sulfide with aromatic hydrocarbons. For the purposes of these investigations, sulfur dyes include, but are not limited to, sulfur vat dyes with the following color index numbers: Vat Blue 42, 43, 44, 45, 46, 47, 49, and 50 and Reduced Vat Blue 42 and 43. Sulfur vat dyes also have the properties described above. All forms of sulfur are covered, including the reduced (leuco) or oxidized state, presscake, paste, powder, concentrate, or so-called "pre-reduced, liquid ready-to-dye" forms.

[4] The petition also alleged material injury or threat of material injury with respect to imports of sulfur dyes sold at LTFV from Hong Kong. Commerce, however, did not initiate an antidumping duty investigation concerning imports from Hong Kong, and the Commission accordingly amended its institution notice to discontinue its investigation on sulfur dyes from Hong Kong (inv. No. 731–TA–549).

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperative; Interstate Transportation for Certain Nonmembers

June 2, 1992.

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, non-exempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30

days of its annual meeting each year. Any subsequent change concerning offices, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, DC 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC

(1) Flav-O-Rich, Inc.
(2) 10140 Linn Station Road, Louisville, KY 40223
(3) Motor Transportation Records Located:
Atlanta, 2121 Faulkner Rd., Atlanta, GA 30324
Wilkesboro, 103 N. Cherry Street, Wilkesboro, NC 28697
Florida Group, 4711 34th Street, North, St. Petersburg, FL 33733
Monroe, 1801 Louisville Ave., Monroe, LA 71203
Bristol, 2537 Catherine St., Bristol, VA 24201
Florence, 1100 S. Church St., Florence, SC 29504
London, I–75 & KY 80, London, KY 40741
Montgomery, 950 W. South Blvd., Montgomery, AL 36196
Greensboro, 3939 W. Market St., Greensboro, NC 27402
Sylacauga, 423 N. Norton Ave., Sylacauga, AL 35150
(4) Beverly L. Williams, 10140 Linn Station Road, Louisville, KY 40223

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–13220 Filed 6–4–92; 8:45 am]

BILLING CODE 7035–01–M

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Advisory Committee on Actuarial Examinations; Meeting

Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in the Conference Room of the Office of Director of Practice, suite 600, 801 Pennsylvania Avenue, NW, Washington, DC on Tuesday, June 30, and Wednesday, July 1, 1992, from 8:30 a.m. to 5 p.m.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in title 29 U.S. Code, section 1242(a)(1)(B) and to review the May 1992 Joint Board examinations in order to make recommendations relative thereto, including the minimum acceptable pass score. The examination program, including the syllabus topics for the November 1992 pension actuarial examination and the May 1993 basic actuarial examinations will be discussed. In addition, the number of questions on the Joint Board examinations will be addressed.

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act (Pub. L 92–463) that the portions of the meetings dealing with the discussion of questions which may appear on the Joint Board's examinations and review of the May 1992 Joint Board examinations fall within the exceptions to the open meeting requirement set forth in title 5 U.S. Code, section 552(c)(9)(B), and that the public interest requires that such portions be closed to public participation.

The portion of the meeting dealing with the discussion of the other topics will commence at 1:30 p.m. on June 30 and will continue for as long as necessary to complete the discussion, but not beyond 3 p.m. This portion of the meeting will be opened to the public as space is available. Time permitting, after discussion of the program, interested persons may make statements germane to this subject. Persons wishing to make oral statements are requested to notify the Committee Management Officer in writing prior to the meeting in order to aid in scheduling the time available, and should submit the written text, or, at a minimum, an outline of comments they propose to make orally. Such comments will be limited to ten minutes in length. Any interested person also may file a written statement for consideration by the Joint Board and Committee by sending it to the Committee Management Officer. Notifications and statements should be mailed no later than June 15, 1992 to Mr. Leslie S. Shapiro, Joint Board for the Enrollment of Actuaries, c/o U.S. Department of the Treasury, Washington, DC 20220.

Dated: June 2, 1992.

Leslie S. Shapiro,

Advisory Committee Management Officer, Joint Board for the Enrollment of Actuaries.

[FR Doc. 92–13197 Filed 6–4–92; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions from the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contained no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency.

whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S.Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., room S-3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Florida: FL91-15 (Feb. 22, 1991). p.135, p.136.

New Jersey: NJ91-3 (Feb. 22, 1991). p. 721, pp. 726-727.

Volume II

None.

Volume III

Colorado: CO91-5 (Feb. 22, 1991). p.All.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about Janaury 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 29th day of May 1992.

Alan L. Moss

Director, Division of Wage Determinations.

[FR Doc. 92-12963 Filed 6-4-92; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. The Helen Mining Company

[Docket No. M-92-47-C]

The Helen Mining Company, R.D. #2, Box 2110, Homer City, PA 16748-9558 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Homer City Mine (I.D. No. 36-000926) located in Indiana County, Pennsylvania. Due to an impassable roof fall in the LW9 No. 1 entry of the longwalls main return, the petitioner proposes to conduct an evaluation to insure that an adequate quantity of air is passing over the fall. The petitioner states that the inby and outby ends of the roof fall would be supported in accordance with the approved roof control plan at the mine, and a certified person would travel the return air course to examine the outby end of the fall and the tailgate side of the longwall face to determine the air flow into the return entry, and to test for methane.

2. Mountain Coal Company

[Docket No. M-92-59-C]

Mountain Coal Company, P.O. Box 591, Somerset, Colorado 81434 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its West Elk Mine (I.D. No. 05-03672) located in Gunnison County, Colorado. The petitioner proposes to install dry type transformers, rectifiers, or permanent pumps in the belt or intake entry without coursing the equipment ventilation directly into the return. The petitioner states that the equipment would be housed in a monitored fireproof structure and would provide the same measure of protection to miners as the proposed standard.

3. Mystic Energy Corporation

[Docket No. M-92-60-C]

Mustic Energy Corporation, 107 George Street, Beckley, West Virginia 25801 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Hazy Creek Mine (I.D. No. 46-07802) located in Raleigh County, West Virginia. The Petitioner states that due to unstable conditions inby and outby a roof fall, any clean-up efforts would be both dangerous and impractical. The petitioner proposes to maintain a 36 inch ventilation pipe to surround the fall area for a length of about 350 feet, and maintain a sufficient amount of air in the return and the pipe to ventilate the working sections.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 6, 1992. Copies of these petitions are available for inspection at that address.

Dated: May 29, 1992.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 92-13216 Filed 6-4-92; 8:45 am]

BILLING CODE 4510-43-M

NUCLEAR REGULATORY COMMISSION

Tennessee Valley Authority, Browns Ferry Nuclear Plant, Unit 2; Environmental Assessment and Finding of No Significant Impact

[Docket No. 50-260]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of section III.D.2(a) and III.D.3 of appendix J to 10 CFR part 50 to the Tennessee Valley Authority (the licensee) for the Browns Ferry Nuclear Plant, Unit 2. The unit is located at the licensee's site in Limestone County, Alabama. The exemption was requested by the licensee in its letter dated December 20, 1991.

Environmental Assessment

Identification of Proposed Action

The proposed exemption would allow the licensee deviation from the provisions of sections III.D.2(a) and III.D.3 of appendix J to 10 CFR part 50 that require Type B and Type C component leak rate testing during refueling outages on an interval not to exceed two years. In its letter of December 20, 1991, the licensee requested an extension of the allowable test interval for 87 components to permit realignment of the test program with the Brown Ferry Nuclear Plant, Unit 2 refueling outage schedule. The letter stated this outage will begin no later than January 29, 1993. The required extension is no more than 177 days for any single component.

The Need for the Proposed Action

The proposed exemption is required to permit the licensee to avoid an otherwise unnecessary and lengthy plant outage. The required testing is ordinarily performed during refueling outages.

Environmental Impacts of the Proposed Action

The proposed exemption will not increase potential radiological environmental effects due to containment leakage beyond those already permitted by the regulations. Testing of Type B and Type C components under appendix J to 10 CFR part 50 is intended to demonstrate that containment leakage from these components is within defined acceptable limits. These limits provide information used to calculate the maximum radiological consequences of a design-basis accident. Appendix J limits the combined leak rate for all penetrations and valves subject to Type B and C tests to less than 0.6 times the maximum allowable containment leakage rate with the containment pressurized to its design limit (commonly termed "0.6 La"). The licensee states in its December 20, 1991 letter that the most recent testing of the Type B and C components yielded leakage of less than 17% of the Appendix J limit. When the projected component degradation is added, leakage at the end of the proposed extended interval is expected to be well within acceptable limits. Therefore, the Commission concludes there would be no adverse radiological environmental impact as a consequence of the proposed exemption beyond that already permitted by the regulations.

With regard to potential non-radiological environmental impact, the proposed exemption involves systems located within the restricted areas as defined in 10 CFR part 20. The exemption does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there is no significant non-radiological environmental impact associated with the proposed exemption.

Since it does not involve adverse radiological or other environmental impacts, the Commission concludes the proposed exemption does not significantly change the conclusions of the licensee's "Final Environmental Statement, Browns Ferry Nuclear Plant Units 1, 2, and 3", dated September 1, 1992.

Alternative to the Proposed Action

Because the staff has concluded that there is no significant environmental impact associated with the proposed exemption, any alternative to the exemption will have either no significantly different environmental impact, or grater environmental impact.

The principal alternative would be to deny the requested exemption. This denial would require an additional plant outage to perform testing. Such an outage would result in additional occupational radiation dose to plant workers without a compensatory increases in public health and safety. Therefore, this alternative is not desirable.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the "Final Environmental Statement, Brown Ferry Nuclear Plant Units, 1, 2, and 3", dated September 1, 1972.

Agencies and Persons Contacted

The NRC staff has reviewed the licensee's request dated December 20, 1991, that supports the proposed exemption. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For details with respect to this action, see the licensee's request for the exemption dated December 20, 1991, which is available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington DC, and at the Athens Public Library, South Street, Athens, Alabama 35611.

Dated at Rockville, Maryland this 28th day of May 1992.

For The Nuclear Regulatory Commission.

Frederick J. Hebden,

Director, Project Directorate II-4 Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92-13222 Filed 6-4-92; 8:45 am]

BILLING CODE 7590-01-M

Workshop on Current Licensing Basis

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public workshop.

SUMMARY: The Nuclear Regulatory Commission (NRC) is holding a public workshop to discuss the Current Licensing Basis (CLB) and how it is maintained, utilized, and changed over the life of the license.

DATES: The workshop will be held on June 23–24, 1992, from 8 a.m. to 4 p.m.

ADDRESSES: The workshop will be held at the Holiday Inn, Crowne Plaza, Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: David Wigginton at 301–504–1301.

SUPPLEMENTARY INFORMATION: The workshop will include presentations on Generic Letter 92–03, the results of the 14 plant audits, and advanced reactor applications and license renewal, and panel discussions on the following: components of the CLB, the significance and use of the CLB, the significance and use of the updated safety analysis report (USAR), the significance and use of the design basis reconstitution efforts, managing changes to the CLB, managing

licensee commitments, and electronic storing and retrieving (compiling) the CLB.

Dated at Rockville, Maryland, this 1st day of June 1992.

John T. Larkins,

Director, Project Directorate IV-1, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92-13223 Filed 6-4-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-423]

Northeast Nuclear Energy Co. (Millstone Nuclear Power Station, Unit No. 3); Order Approving Transfer of License

I.

The Public Service Company of New Hampshire (PSNH) is the holder of a 2.8475 percent ownership share of Millstone Nuclear Power Station, Unit No. 3. PSNH's interest in Millstone Unit No. 3 is governed by License No. NPF-49, issued by the U.S. Nuclear Regulatory Commission (the NRC) pursuant to 10 CFR part 50 on January 31, 1986, in Docket No. 50-423. Under this license, only Northeast Nuclear Energy Company (NNECO), acting as agent and representative of 14 utilities listed in the license, has the authority to operate Millstone Unit No. 3. Millstone Unit No. 3 is located in New London County, Connecticut.

II.

NNECO requested an amendment to NPF-49 by letter dated March 21, 1991, as supplemented June 11, 1991, in which NNECO requested that License No. NPF-49 be changed to reflect the transfer of control of PSNH's 2.8475 percent ownership in Millstone Unit No. 3 through the merger of PSNH with a wholly owned subsidiary of Northeast Utilities (NU), with PSNH emerging as the surviving entity from the merger as a wholly owned subisidary of NU. The amendment would be effective on the date that PSNH merges with and into a wholly owned subsidiary of NU. NNECO has advised the NRC staff that the merger is expected to be completed by May 1992.

The transfer of any right under License No. IPF-49 is subject to the NRC's approval pursuant to 10 CFR 50.80(a). Based on NNECO's operation of Millstone Unit No. 3 to date and the small ownership interest affected by the transfer, the staff has determined that the proposed transferee (NNECO) remains qualified to be a holder of License No. NPF-49 and that the license transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission.

III.

Accordingly, pursuant to sections 161b and 161i of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201, and 10 CFR 50.89, It is Hereby Ordered that transfer of control of PSNH's 2.8475 percent ownership in Millstone Unit No. 3 through the merger of PSNH with a wholly owned subsidiary of NU, with PSHN emerging as the surviving entity from the merger as a wholly owned subsidiary of NU, is approved, subject to the following: (1) The amendment describing PSNH as a wholly owned subsidiary of NU in License No. NPF-49 will become effective as of the date the merger is completed; (2) should the merger not be completed by November 30, 1992, this Order will be null and void; and (3) on application and for good cause shown, this Order may be extended for a short period beyond November 30, 1992.

Dated at Rockville, Maryland, this 29th day of May, 1992.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 92-13224 Filed 6-4-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-443 (License No. NPF-86)]

Public Service Co. of New Hampshire; Northeast Utilities; North Atlantic Energy Service Co.; North Atlantic Energy Co.; (Seabrook Station Unit 1); Order Approving Transfers and Notice of Issuance of License Amendments

I.

On March 15, 1990, pursuant to 10 CFR part 50, License No. NPF-86 was issued, under which The Public Service Co. of New Hampshire (PSNH) is authorized to operate and hold a 35.6 percent ownership share in Seabrook Station, Unit 1 (Seabrook), which is located in Rockingham County, New Hampshire.

II.

On January 28, 1988, PSNH filed for bankruptcy protection from its creditors. As incident to that bankruptcy filing, a Third Amended Joint Plan of Reorganization was filed with The United States Bankruptcy Court for the District of New Hampshire on December 28, 1989, under which Northeast Utilities (NU) would acquire PSNH, including PSNH's ownership share in Seabrook, and would assume operation of Seabrook. The acquisition would increase NU's ownership interest in Seabrook to about 39.6 percent. After approval of the plan by PSNH's shareholders, its creditors and the New Hampshire State Legislature, the Bankruptcy Court confirmed the plan and ordered its implementation on April 20, 1990.

III.

To implement the plan of reorganization, NU applied to the U.S. Nuclear Regulatory Commission (NRC) for two license amendments to license NPF-86, by two letters dated November 13, 1990, as supplemented by later filings. Under these requested license amendments the ownership share of PSNH in Seabrook would be transferred to the North Atlantic Energy Co. (NAEC), a wholly owned subsidiary of NU, and control over the operation of Seabrook would be transferred from the New Hampshire Yankee Division of PSNH to the North Atlantic Energy Service Co. (NAESCO), another wholly owned subsidiary of NU. Notice of these applications for transfers and proposed no significant hazards consideration determinations were published in the **Federal Register** on February 28, 1991, and March 6, 1991, respectively. 56 FR 8373; 56 FR 9384.

IV.

The transfer of rights under License No. NPF-86 is subject to the NRC's approval under 10 CFR 50.80. Based on information provided by the licensee and NU, and other information before the Commission, it is determined that the proposed transfer of control of operations of Seabrook from PSNH to NAESCO, and the proposed transfer of ownership share of PSNH to NAEC, subject to the conditions set forth herein, are in the public interest and are consistent with applicable provisions of law, regulations and orders issued by the Commission. These actions were evaluated by the staff as documented in Safety Evaluations, dated May 29, 1992, which contain final no significant hazards consideration determinations. The conditions of the transfers, to which the licensee has not objected, are:

A. For a period of three years from the date of issuance of the NRC license amendment approving the transfer of management authority to NAESCO, the licensee shall inform the Director, NRR, at least 60 days in advance, of any change in the senior site official for the Seabrook facility, or in the principal duties of such official, unless such change is due to unforeseen circumstances. In such circumstances, the licensee shall inform the Director, NRR, of such change as soon as it can reasonably do so.

B. For a period of three years from the date of issuance of the NRC license amendment approving the transfer of management authority to NAESCO, the Joint Owners shall provide to the Director, NRR, promptly any report of the Oversight Committee or any report of the Operator or of any contractor or consultant which has been provided to the Joint Owners relating to: plant design, equipment or personnel performance or plant operations that could have potentially adverse effects on facility safety; any substantive programmatic or procedural changes to the employee concerns program; any allegation of employee harassment, intimidation or discrimination; changes to any compensation incentive program which could have potentially adverse effects on facility safety; and any changes to the annual operations and maintenance and capital expenditure budgets. These reporting requirements are in addition to other requirements of NRC regulations.

C. The oversight reports in 2.C.(4)(b) [B. above] shall be followed promptly by a report to the Director, NRR, by the Operator, reflecting the Operator's assessment of such report and proposed corrective action, if any. Submission of the Operator's assessment and proposed corrective action shall not delay submission of the report called for by license condition 2.C.(4)(b). A review and assessment of the Operator's report by the Joint Owners shall be provided to the Director, NRR, together with any corrective actions and disposition of the Operator's report.

D. For a report of three years from the date of issuance of the NRC license amendment approving the transfer of management authority to NAESCO, the licensee shall inform the Director, NRR, of any changes to certain sections of the Joint Ownership Agreement and the Managing Agent Operating Agreement. These sections are: Sections 3.c, 7.a, 7.e, 8, 10, 11 and 16.b, as described in appendix 1 of the Settlement Agreement dated as of July 19, 1990 between Northeast Utilities Service Company and New England Power Company.

E. NAESCO is prohibited from marketing or brokering power or energy from the plant. In addition, all licensees other than NAESCO are responsible and accountable for the actions of their agent to the extent said agent's actions effect the marketing or brokering of power and energy from Seabrook Station, Unit 1.

V.

Accordingly, pursuant to sections 103, 105, 161b, 161i, 184, and 187 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201 et seq. and 10 CFR part 50, *It is hereby ordered* that the transfers to North Atlantic Energy Co. and North Atlantic Energy Service Co., discussed above, are approved, and notice is given that license amendments providing for the transfer of control of operation of Seabrook to NAESCO, subject to license conditions set out and herein, and the transfer of the ownership share of PSNH in Seabrook to NAEC are issued, and both amendments being subject to the further conditions that should both of these transfers not be completed by November 30, 1992, this order will be null and void, except that for good cause shown, the date upon which the transfers are to be completed may be extended for a short period beyond November 30, 1992.

Dated at Rockville, Maryland this 29th day of May, 1992.

For The Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 92–13225 Filed 6–4–92; 8:45 am]

BILLING CODE 7590–01–M

PHYSICIAN PAYMENT REVIEW COMMISSION

Request for Letters of Intent and Notice for Cooperative Agreements and Grants for Fiscal Year 1992

AGENCY: Physician Payment Commission.

ACTION: Notice.

The Physician Payment Review Commission is soliciting letters of intent to develop proposals for research and analysis that can support its ongoing work to advise Congress on issues specified in its legislative mandate. The Commission is looking to researchers to propose methodologies and databases that can make significant contributions to its deliberations in a number of policy areas. This notice describes the application procedures, general policy considerations, and criteria to be used in reviewing applications for the Commission's cooperative agreements and grants. This will be a two-stage process. First, all interested applicants must submit a letter of intent. Based upon the criteria discussed below, the Commission will select researchers to submit full proposals.

Background on the Commission

The Physician Payment Review Commission was established in 1986 Pub. L. 99–272) to advise the U.S. Congress on physician payment policy under Part B of the Medicare program. The 13-member Commission is comprised of physicians, health economists, health services research experts, and individuals representing the perspectives of Medicare beneficiaries, private payers, nurses, and other expert in the field of health policy. Supporting the Commission is multidisciplinary staff with skills in research, policy analysis, and administration.

In 1990, the Commission's legislative mandate was substantially expanded to include topics beyond Medicare physician payment. Its responsibilities now include consideration of a broader set of interrelated policies affecting the financing, quality, and delivery of health services. These include access to care for residents of underserved areas, medical malpractice reform, development of practice guidelines that improve quality and contain costs, enhancing physician profiling, improving data needed for cost containment and quality assurance, managing care, and training physicians to meet the nation's needs.

The Commission submits an annual report to the Congress on March 31. It also submits a series of reports in May concerning Medicare Volume Performance Standards, monitoring access to care, and the financial liability of Medicare beneficiaries.

Priority Areas for Cooperative Agreements and Grant Funding

The Commission invites proposals on the following topics:

(1) Measurement of access to care for Medicaid beneficiaries. The Commission is interested in development and testing of measures that would be suitable for monitoring access by Medicaid beneficiaries on a routing basis, either through the use of claims data or survey data. Projects proposing to develop measures, as well as projects that go further to test their feasibility, will be considered.

(2) Graduate medical education. The Commission is interested in:

—Studies of the relationship between teaching of residents and the productivity of faculty physicians. It invites proposals for studies of the effect of teaching activity, in both inpatient and outpatient settings, on the time, effort and efficiency of academic physicians when providing identifiable patient care services.

–Studies that would inventory the specific service roles played by residents in teaching settings.

–Gaining a better understanding of decisionmaking within teaching institutions regarding the financing, establishment, and expansion of residency programs.

–Studies of the current roles played by nonphysician practitioners in meeting the service needs of teaching hospitals and their potential as substitutes for residents and fellows.

(3) The relationship between physician supply and rates of use of medical services. The Commission is

interested in studies on both the role of aggregatge supply and the role of speciality mix on the volume, intensity, and appropriateness of medical care.

(4) Impact of Medicare physician payment reform on physician services delivered to privately-insured patients. The Commissioni is interested in changes in both the price and volume of physicians' services provided to privately-insured patients that are attributable to changes in Medicare payments.

(5) Incorporation of severity of illness into Medicare's resource-based fee schedule. The Commission is interested in proposals that would develop and/or test the feasibility of patient-level information that could be used to adjust Medicare payments.

(6) Bundling of physicians' services for payment purposes. Medicare and private insurers have long used a bundled payment for major surgery that includes a defined range of pre- and postoperative evaluation and management serives as well as the operation. The Commission is interested in research on options for additional bundling (for example, combining payment for certain diagnostic tests with payment for procedures or visits). Consideration should be given to the impact of bundling policies on different specialties, assuming that they would be integrated into a payment system with no specialty differentials, and how such policies might be designed to ensure equitable payment.

(7) Measurement of defensive medicine. The Commission is interested in development and application of a methodology to measure the cost or extent of defensive medicine.

(8) Practice guidelines and medical malpractice. The Commission is interested in studies of the roles that practice guidelines have played in decisions in malpractice cases.

(9) The impact of technology diffusion on expenditures for physicians' services. The Commission is interested in several topics related to understanding the process by which medical technologies diffuse, the factors that influence diffusion, and their effects on spending. In particular, the Commission's interests include:

-Studies of the factors affecting the introduction and diffusion of technologies across geographic areas, physician specialties, and methods of treatment.
-Studies on changing uses of diffusing technologies.
-Development of criteria for determining when technologies are no longer diffusing.
-Studies of instances in which new technologies either substitute for, or complement, existing technologies.

Application Process

The Commission encourages applications that seek to make significant contributions to knowledge in any of the areas mentioned above. All interested organizations that wish to be considered for an award must submit a letter of intent.

Criteria for Letter of Intent

Six copies of the letter of intent must be submitted by June 22, 1992. The letter should be double-spaced and contain the following:

1. Proposed area of research.
2. Brief summary of the application's objectives (2–3 paragraphs).
3. Brief summary of the proposed project including issues to be examined, research, design, analysis plan, and data sources as appropriate (not to exceed 3–5 pages).
4. Resources available to conduct project (not to exceed 1 page).
5. Estimated budget and duration of project (not to exceed 1 page).
6. Knowledge and experience of principal investigator (not to exceed 1 page).

Applicants are discuraged from including extensive discussions of the nature of the problem, extensive review of the literature, general statements of capabilities, and summaries of the Commission's statements on the issues to be addressed.

Evaluation of Letters of Intent

Applicant's letters of intent will be reviewed by a technical review panel composed of at least three (3) people. The panel will evaluate all letters and determine which applicants will be requested to submit a complete proposal. The recommendations for review will be based on the following criteria:

1. The relevance of the project to the Commission's work.
2. Description of the project objectives.
3. The adequacy of the study design, including specific hypotheses to be examined and data sources, as appropriate.
4. What the project will accomplish and how it relates to or differs from previous work in the area.
5. Investigators' knowledge and experience in the area.
6. The level of effort needed to conduct the project.

In addition to the recommendation of the review panel, the Commission may consider other factors in selecting which applicants will be asked to submit a formal proposal. These include compatibility of applications with Commission priorities, as judged by senior staff, and the availability of resources.

The Commission will notify those applicants who have been selected to submit full proposals by sending them a formal Request for Proposal. Applicants will be given 30 days to submit their formal proposal.

Formal Proposals

The following provides a basic outline of what selected applicants will be expected to submit in a formal proposal:

1. Project title and objectives.
2. Background and policy relevance of issue to be studied.
3. Study design, including statement of hypotheses, specification of variables, data source, sampling strategy, development of measures and/or survey instruments, and database management, as appropriate.
4. Analysis plan, including how data will be used and anlayzed, analytic methods, potential problems and strategies for resolving problems.
5. Work plan including description of tasks, time schedule, and level of effort for key individuals and the number of days devoted to each task.
6. Qualifications of key project staff.
7. Organizational chart.
8. Detailed budget providing justifications and explanations for amounts requested.

Review of Proposals

Proposals will be reviewed by a panel composed of at least three (3) individuals. Reviewers will score applications, basing their scoring decisions and approval recommendations on the criteria published in the Commission's Request for Proposals, part IV section M, "Technical Evaluation and Criteria for Award."

General Information

Number and Size of Project: The number of agreements depends on the availability of funds. Most awards range from $50,000 to $350,000 per project. It is anticipated that up to six (6) projects will be awarded through this solicitation.

Authority: The Commission's authority for making these awards is based on section 1845(c)(2)(B) of the Social Security Act (42 U.S.C. 1395w-1).

Regulations: General policies and procedures that govern the administration of cooperative agreements and grants are located in

title 45 of the Code of Federal Regulations parts 74 and 92. Applicants are urged to review the requirements contained in those regulations.

Submission Address: Physician Payment Review Commission, 2120 L Street, NW., suite 510, Washington, DC 2037.

Obligation: This solicitation in no way obligates the Commission to fund any applicant.

Contact: Paul B. Ginsburg, Ph.D., Director or Lauren LeRoy, PhD., Deputy Director Physicial Payment Review Commission, 2120 L Street, NW, suite 510, Washington, DC 20037, (202) 653–7220.

Dated: June 2, 1992.

Paul B. Ginsburg,

Executive Director.

[FR Doc. 92–13182 Filed 6–4–92; 8:45 am]

BILLING CODE 6820–SE–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–30757; File No. SR-Amex–92–08]

Self-Regulatory Organizations; Filing and Order Granting Temporary Accelerated Approval of Proposed Rule Change by American Stock Exchange, Inc., Relating to the Use of the Auto-Ex System During Periods of Extremely High Order Flow in Select Equities

May 29, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and rule 19b–4 thereunder,[2] notice is hereby given that on February 21, 1992, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Amex has requested temporary accelerated approval of this proposal.[3] The Commission is granting accelerated approval and is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] The Amex has requested approval of the proposed rule change for a six-month period. See letter from Claire P. McGrath, Senior Counsel, Amex, to Mary Revell, Branch Chief, SEC, dated March 19, 1992.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to allow the automatic execution of orders up to 599 shares entered into the Post Execution Reporting ("PER") system [4] in select Amex equities through the Exchange's Auto-Ex system during periods of extremely high order flow.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Introduced in 1985, Auto-Ex is the automated execution feature of PER and the Amex Options Switch ("AMOS"), the electronic order routing system for options. Auto-Ex is currently being used to execute customer market and marketable limit orders [5] in options at the best bid or offer being displayed when an order in the option series is entered into the AMOS system. The execution of market and marketable limit orders is immediately reported to the tape and to the firm entering the order. Auto-Ex trades are submitted for comparison processing by the Exchange as locked-in trades.

The Exchange is not proposing to use Auto-Ex to execute automatically orders of up to 599 shares [6] in Amex equities during periods of extremely high order flow. When activated during such periods, Auto-Ex would execute all market and marketable limit orders of up to 599 shares at the Amex's best bid or offer being displayed on the Exchange at the time the order is entered into the PER system. The Exchange believes that the use of Auto-Ex in this manner would assist the specialist in providing a faster execution and turn-around time for such customer orders.

In order for Auto-Ex to be activiated for an equity, two Exchange Floor Governors would determine on a case by case basis that there is extremely high order flow for a particular equity security, given the characteristics of the security and the number and size of orders being sent through the PER system.[7]

Moreover, the Exchange will allow Auto-Ex to be activated and remain in use only when the spread between the displayed bid and offer is no wider than the "minimum fractional change" [8] and there is no potential for price improvement.[9] Because of this limitation, the Amex best bid or offer should be the *de facto* Intermarket Trading System ("ITS") best bid or offer.

The specialist will be the contra-side of all Auto-Ex orders. If the best bid or offer being displayed is represented by an order on the specialist's book when an Auto-Ex order arrives, the specialist will subsequently execute that book order for his or her own account, thus ensuring that limit book orders are protected.[10] To avoid double printing of

[4] PER is the Exchange's electronic order entry and routing system for equities, which directs certain orders directly to the specialist on the Amex floor for manual execution.

[5] A market order is an order to buy or sell a stated amount of a security at the prevailing best bid or offer. A marketable limit order is an order to buy or sell a stated amount of a security at a specified price or a better price, if obtainable, entered at a time when the prevailing best bid or offer is at or better than the specified price.

[6] Presently, PER accepts orders for up to 5,000 shares in Amex equities. See Securities Exchange Act Release No. 28891 (February 15, 1991), 56 FR 7438 (approving File No. SR–Amex–90–37).

[7] In addition to trading characteristics and the circumstances surrounding the increased volume of orders, the Exchange stated that the main considerations for activating Auto-Ex for a particular security would be the length of the order queue in PER and, if there is order flow build-up prior to the opening, the number of orders eligible for execution at the opening price through the Exchange's Opening Automated Reporting Service ("OARS"). Specifically, the Exchange would use the following as guidelines: queues longer than one minute in PER and a backlog of more than 100 orders stored in OARS. See letter from Claire P. McGrath, Senior Counsel, Amex, to Mary Revell, Branch Chief, SEC, dated March 16, 1992.

[8] Amex Rule 127 lists the minimum fractional changes for securities traded on the Exchange.

[9] See letter from Claire P. McGrath, Senior Counsel, Amex, to Mary Revell, Branch Chief, SEC, dated February 24, 1992, correcting the filing to reflect that there is no potential for price improvement when the spread between the displayed bid and offer is no wider than the minimum fractional change. The Amex stated that Auto-Ex will automatically prevent the automatic execution of orders when the spread in a security becomes wider than the minimum fractional change. See letter from Claire P. McGrath, Senior Counsel, Amex, to Mary Revell, Branch Chief, SEC, dated March 16, 1992.

[10] See letter from Claire P. McGrath, Senior Counsel, Amex, to Mary Revell, Branch Chief, SEC,

Continued

orders in this situation, the specialist transaction with the order on the book will not be reported to the Market Data System ("MDS"), but the trade occurring though Auto-Ex will be automatically reported to MDS.[11]

The Amex states that Auto-Ex is part of the Exchange's Order Processing System ("System").[12] The Amex represents that implementation of Auto-Ex will not affect adversely Amex's system capacity and operations during trading hours. Similarly, the Amex represents that the Exchange's current system capacity is sufficient to meet expected demand.

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons, making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–92–08 and should be submitted by June 26, 1992.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the Amex's proposal to extend Auto-Ex to the execution of certain equity orders entered through the PER system for a temporary period is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, specifically, sections 6 and 11A of the Act.[13]

In particular, the use of Auto-Ex for equities should enhance the efficiency of the execution of PER orders during periods of heavy volume, and thus facilitate transactions on the Amex, consistent with section 6(b)(5) of the Act. In this regard, the Commission believes that the proposed automatic execution of equity orders should speed order execution and reduce the possibility of order handling delays during heavy trading volume periods.

The Commission also believes that limiting the use of Auto-Ex to specific circumstantces described in the Amex's proposal should ensure that the primary market continues to serve its price discovery function. An essential characteristic of a primary auction market for equities such as the Amex is an active trading crowd to which orders can be exposed for possible price improvement. Because the use of an automatic execution feature eliminates order exposure and possible price improvement, the Commission has concerns about the use of such a feature by a primary exchange. The Commission believes, however, that the absence of order exposure under the terms of this proposal is not inconsistent with the Act because the use of Auto-Ex under this proposal would be limited to high volume situations where there is a minimum variation market and no opportunity for price improvement.[14]

In addition, the Commission believes that the proposed extension of Auto-Ex is consistent with section 6(b)(8) of the Act, in that it should not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.[15] Markets trading the same stocks compete in a number of areas, including execution quality, fees and cutomer services. The ability of a particular market to handle order flow efficiently during heavy volume surges is a service enhancement that may affect order routing decisions in a competitive market environment. The proposed extension of Auto-Ex to equities should help the Exchange's efforts in this area to remain competitive with exchanges which have similar automation systems in place.[16]

The Commission also believes that the proposed rule change is consistent with the requirements of section 11A(a)(1)(C) of the Act.[17] Specifically, the Commission believes that the proposal is designed to contribute to the best execution of investors' orders while assuring the economically efficient execution of transactions, which in turn should protect the public interest and promote fair and orderly markets.[18] In this regard, incoming orders subject to Auto-Ex should receive the best available execution because the Amex best bid or offer includes orders on the specialist's limit order book as well as in the trading crowd. In addition, the Commission believes that public investors should be benefitted as a result of the enhanced competition

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dated March 16, 1992. The Amex noted, however, that during periods of extremely high order flow, orders being represented by floor brokers in the crowd also should increase, resulting in more orders on the specialist's book being executed against orders in the crowd, thus requiring use of this procedure only occasionally.

[11] MDS is the Amex's system for the collection and reporting of market information for processing by the Securities Industry Automation Corporation ("SIAC") and dissemination by securities information vendors. The Amex stated that Exchange systems will capture for surveillance purposes trade data regarding the transaction between the specialist and the limit order book. Conversation between Claire P. McGrath, Senior Counsel, Amex, and Edith Hallahan, Attorney, SEC, on May 29, 1992.

[12] See letter from Edward Bilinski, Vice President, Amex, to Mary Revell, Branch Chief, SEC, dated March 20, 1992.

[13] 15 U.S.C. 78f and 78k–1 (1988).

[14] Several regional exchanges have automatic execution systems that provide a 15-second order exposure period to provide a possibility of price improvement. Because the Amex's proposal is limited to situations where there is no possibility of price improvement and where the heavy volume warrants the automatic execution feature, an order exposure feature appears to be unnecessary because it would delay order execution without significant benefit.

[15] 15 U.S.C. 78f(b)(8) (1988).

[16] The Boston, Midwest, Pacific and Philadelphia Stock Exchanges have various automatic execution systems in place for trading equity securities.

[17] 15 U.S.C. 78K-1(a)(1)(C) (1988).

[18] 18 The Amex is using its quotes rather than the ITS quotes as the basis for Auto-Ex executions. Because, as noted above, Auto-Ex will be used only in minimum variation markets, the Amex quotes will almost always be the ITS best bid or offer, thus providing best execution of Auto-Ex orders.

among exchange markets which should result from the Exchange's implementation of Auto-Ex.

The Commission believes that it is appropriate to allow the Exchange to implement Auto-Ex for equities for a temporary period because this will afford both the Exchange and the Commission an opportunity to monitor the operation and effectiveness of the proposal. Specifically, the Commission believes that this temporary period is necessary to provide the Exchange with additional time to assemble data regarding the operation of Auto-Ex and to allow the Commission to weigh the benefits of speedy order executions during periods of heavy volume against the absence of full order exposure to the auction market. Thus, in order to facilitate its review of the permanent use of Auto-Ex in equities, the Commission requests that the Amex submit by October 15, 1992 a report detailing each use of Auto-Ex in equities during this period. Specifically, the Commission is interested in the extent to which Amex experiences queues in the Amex's PER and OARS systems due to heavy volume prior to implementation of Auto-Ex, the total volume and number of orders, other characteristics of the stock supporting the use of Auto-Ex, the length of time Auto-Ex was in place, and the number and types of orders executed during its use. The Commission is also interested in the length of time between an Auto-Ex execution and the resulting execution by the specialist of a limit order to protect the book. In addition, the Commission expects that the Exchange will submit a proposed rule change by October 1, 1992 to either request permanent approval or an extension of the temporary use of Auto-Ex for certain equity securities.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval of the use of Auto-Ex for equities should benefit investors and the public interest by affording them a more efficient method of executing small market and marketable limit orders in actively-traded equities during periods of extremely high order flow. In such situations, it is likely that queues will develop in PER and/or OARS. Because it is difficult to predict when such situations will arise, the Exchange requests accelerated approval of this proposal in order to clarify as quickly as possible the Amex's authority to use the Auto-Ex system for equities when necessary to provide more efficient and effective market operations during periods of extremely high order flow. Further, the general substance of the proposal, the use of Auto-Ex for Amex equities, has been noticed previously in the **Federal Register** for the full statutory period without comment.[19]

It is therefore ordered, Pursuant to section 19(b)(2) [20] that the proposed rule change (SR–Amex-92–08) is hereby approved for a period ending December 1, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–13143 Filed 6–4–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–30748; File No. SR–GSCC–92–06]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Proposed Rule Change Requesting an Extension of Its Authority To Maintain Its Current Clearing Fund Formula

May 28, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 14, 1992, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by GSCC.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would allow GSCC to continue to use its current clearing fund formula.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On April 12, 1990, the Commission approved, on a temporary basis, until April 30, 1992, a proposed rule change (SR–GSCC–89–13) that revised GSCC's clearing fund formula in various respects, including allowing offsets of required margin amounts. By this filing, GSCC requests that such authority be made permanent or, in the alternative, that the Commission further extend, temporarily, GSCC's authority to maintain its current clearing fund formula.

In its April 12, 1990, approval order ("Approval Order"), the Commission noted that, "in light of its significance to GSCC and its membership, the proposed revisions to GSCC's Clearing Fund formula should be carefully monitored before they become a permanent feature" of GSCC's Rules and Procedures.[3] The essence of the Commission's concerns expressed in the Approval Order involved the adequacy of the following: (1) GSCC's analysis of price volatility; (2) GSCC's measures of correlation; and (3) the liquidity the Clearing Fund provides to GSCC during periods of high volatility. Each concern is discussed below.

1. Analysis of Price Volatility

The Commission stated in the Approval Order that GSCC should "continue to consider ways to refine its analysis of price volatility, including procedures to consider the effects of

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[19] See Securities Exchange Act Release No. 27013 (July 10, 1989), 54 FR 30298 (July 19, 1989) File No. SR–Amex-89–11).This filing proposed the use of Auto-Ex for 20 select equities, without limiting its use to situtions of extremely high order flow and a minimum variation market, as proposed in the above-captioned filing. The filing also proposed that in the event a limit order on the book or in the crowd represented the best bid or offer, the Auto-EX order would be routed to the specialists's PER screen for execution against that book or crowd bid or offer. The Amex withdrew the proposal on June 19, 1990.

[20] 15 U.S.C. 78s(b)(2) (1988).

[21] 17 CFR 200.30–3(a)(12) (1991).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] This proposal was initially filed on January 25, 1992 as File No. GSCC–92–3. The Commission approved continued use of the Clearing Fund formula for sixty days to allow the Commission to consider this proposal in the context of related proposals now awaiting Commission approval. Securities Exchange Act Release No. 30661 (April 30, 1992), 57 FR 19654.

[3] Securities Exchange Act Release No. 27901 (April 12, 1990), 55 FR 15055.

dramatic price movements."[4] Since the Commission issued the Approval Order, GSCC has compiled nearly two-years' worth of its own price volatility data. This data base is now sufficient for use in assessing and monitoring the adequacy of its margin factors.

GSCC continues to ensure the sufficiency of its margining process by using conservative margin factor criteria. In this regard, the information currently considered on a quarterly basis by the Membership and Standards Committee in reviewing the sufficiency of GSCC's margin factors includes: (1) Historical daily price volatility data prepared by Carol McEntee & McGinley Inc. which looks at the current leading issue in each category and uses means plus two standard deviations and (2) short-term (currently, the past 90 days) and long-term (currently, the past year) GSCC data covering mean plus two standard deviations and, separately, 99 percent of all price movements. GSCC's internal and third-party price volatility data indicates that its margin factors are prudent and conservative, including on the long end of the maturity spectrum, where the greatest exposure exists for GSCC.

Recently, private sector initiatives in the government securities marketplace have arisen, such as the establishment of GOVPX, Inc., that have made significant steps toward disseminating the type of government securities price information that would benefit GSCC. In view of this development, GSCC continues to evaluate the types of third-party price volatility information that are available and the utility of such information. GSCC continues to believe, however, that its own data base would be the most accurate and meaningful source of price volatility data on government securities if GSCC could receive trade data from its members on a time-stamped basis.

2. Measures of Correlation

GSCC believes its disallowance percentage schedule is a conservative one. Currently, GSCC uses neither internal price data nor third-party data to monitor the accuracy of its disallowance percentage schedule. After evaluating available third-party price volatility information, however, GSCC will be able to determine whether and how to use either its internal price data base or a third-party data source to monitor its disallowance percentage schedule.

[4] *Id.*

3. Ensuring GSCC's Liquidity Needs

In the Approval Order, the Commission indicated the need for GSCC "to ensure that the Clearing Fund has sufficient liquidity, during periods of high volatility, to protect it from contingencies stemming from participants' daily net settlement obligations." [5]

GSCC's margining process helps ensure that GSCC has sufficient liquidity to meet its settlement guarantees, even during periods of high volatility. Perhaps the area of greatest potential concern in this regard is forward trades, which present the largest exposure to GSCC. GSCC believes the margining process for forward net settlement positions, on which Clearing Fund deposits are taken and which are subject to a separate margin pool (the forward mark allocation payment process), is conservative and prudent, particularly in light of GSCC's recent rule filing (SR–GSCC–91–04) that makes various changes to GSCC's margin and funds collection processes.[6]

Considering GSCC's positive experience to date with the revised Clearing Fund formula, the conservative nature of its margining process, the extent to which that process has been strengthened to ensure GSCC's liquidity posture, and its ability now to use internal price volatility data to assess the adequacy of margin factors and correlations, GSCC believes its Clearing Fund formula is appropriate and should receive permanent approval.

GSCC believes the proposed rule change will help further its ability to ensure orderly settlement in the government securities marketplace. Thus, GSCC believes the proposal is consistent with the requirements of the Act and, in particular, section 17A because it will promote prompt clearance and settlement.

(B) Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change will have an impact on, or impose a burden on, competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments on the proposed rule change have neither been solicited nor received. Members will be notified of the proposed rule change, and comments will be solicited, by an Important Notice. GSCC will notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, at the address above. Copies of such filing will also be available for inspection and copying at the principal office of GSCC. All submissions should refer to file number SR–GSCC–92–06 and should be submited by June 26, 1992.

[5] *Id.*

[6] Securities Exchange Act Release No. 30135 (December 31, 1991), 57 FR 942. The proposed rule change would allow GSCC to treat forward net settlement positions for Clearing Fund calculation purposes essentially as it does next-day settling and fail net settlement obligations.

In addition to Clearing Fund deposits of a separate "forward mark allocation" margin amount on forward net settlement positions, the proposed rule change would allow GSCC to raise the cap on this daily margin amount from 75 percent to 100 percent. Under most circumstances, this change would allow GSCC to collect the entire amount of the top five daily member debits in each CUSIP.

For the Commission, by the Division of Market Regulation.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-13146 Filed 6-4-92; 8:45 am]

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[Release No. 34-30754; File No. SR-GSCC-92-04]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Filing of a Proposed Rule Change Relating to the Netting of Zero Coupon Government Securities

May 28, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 14, 1992, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would allow GSCC to continue to include in its netting system book-entry zero coupon Government securities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) On January 31, 1991, the Commission approved on a temporary basis, until April 30, 1992, a proposed rule change (File No. SR-GSCC-90-06) to expand GSCC's netting service to include zero-coupon Government securities ("zeros").[1] On April 30, 1992, the Commission approved the service on a temporary basis through July 31, 1992.[2] By this filing, GSCC requests that such authority be made permanent.

In its approval order of January 31, 1991 ("approval order"), the Commission stated that it was approving the proposed rule change on a temporary basis "[i]n light of the significance of this proposal to GSCC and its clearing members, and in light of the probability that GSCC's methodology for risk analysis will be modified at a future date." The Commission indicated that "[I]t believes that GSCC's method of determining the applicable margin factor [for zeros] is reasonable in light of the lack of historical data on which to base the margin assessment." The Commission noted, however, its concern about "the accuracy with which GSCC's current methodology reflects the historical and implied volatility of zeros."

Since the approval order was issued, GSCC has gained almost one year's experience in the netting of zeros without incurring any problems. GSCC's margining process for zeros remains conservative and prudent, and now has the benefit of the use of GSCC's internal price volatility data base. Moreover, as described below, it has modified and improved its risk assessment systems in various respects. In view of the above, GSCC believes that its method for margining zeros is an appropriate one.

1. Use of GSCC's Internal Price Volatility Data Base to Assess the Adequacy of GSCC's Margin Factors

As GSCC noted in its original rule filing, it is not aware of any satisfactory third party source of historical price volatility data on zeros from which to establish applicable margin factors. GSCC stated in that filing that it intended to develop and maintain its own historical price volatility base for zeros, as it does for all other securities eligible for the net, commencing at the time that it started to net zeros.

GSCC now has over one year's worth of its own price volatility data for zeros; this data base is sufficient for use in assessing and monitoring the adequacy of its margin factors for zeros. GSCC hereby represents that the information contained in this data base will be considered on a periodic basis by the Membership and Standards Committee of GSCC's Board of Directors ("Board") in reviewing the sufficiency of GSCC's margin factors for zeros.

2. Continued Use of a Conservative Margining Process

GSCC, in making zeros eligible for its net, recognized that these securities require different considerations from a margining perspective than do other Treasury securities ("non-zeros") because zeros generally are subject to greater price volatility than are non-zeros with the same maturity. Thus, GSCC will continue to maintain a separate margin factor schedule for zeros, which takes into account, based on data contained in the Treasury Department's liquid capital standards, the greater price volatility presented by zeros in general, and the greater price volatility which arises as the remaining maturity of a zero security increase.

The currently applicable margin percentages for zeros range from being the same as those for non-zeros on the short end of the maturity spectrum to two-and-a-half times that applicable to non-zeros on the longest term end. GSCC's internal price volatility data for zeros indicate that these percentages for zeros are prudent and conservative, particularly on the long end of the maturity spectrum, where the greatest exposure exists for GSCC.

3. Strengthening of GSCC's Margining Process Generally

Since the initial approval order was issued, GSCC has filed a proposed rule change (File No. SR-GSCC-91-04) to implement a number of changes to its margining and funds collection processes that will further strengthen that process. Certain of these changes will particularly complement GSCC's process for mitigating the risk arising from guaranteeing net settlement positions in zeros, and serve to ensure that this risk is minimal.

In sum, in view of GSCC's positive experience in the netting of zero, the conservative nature of its margining process for zeros, its ability now to use internal price volatility data to assess the adequacy of its margin factors for zeros, and the general strengthening of GSCC's margining process, GSCC believes that its method for margining zeros is an appropriate one and that its authority to net zeros should be made permanent.

(b) The proposed rule change will help further GSCC's ability to ensure orderly settlement in the Government securities marketplace, by expanding the scope of Government securities eligible for its netting system. Thus it is consistent with

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[7] 17 CFR 200.30-3(a)(12) (1991).

[1] Securities Exchange Act Release No. 28842 (January 31, 1991), 56 FR 5032.

[2] Securities Exchange Act Release No.30661 (April 30, 1992), 57 FR 19654 (approving File Nos. SR-GSCC-92-01, 92-02, and 92-03).

section 17A of the Act and the rules and regulations thereunder.

B. Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change will have an impact on, or impose a burden on, competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments on the proposed rule change have not yet been solicited or received. Members will be notified of the proposed rule change, and comments will be solicited, by an Important Notice. GSCC will notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriated and publishes its reason for so finding or (ii) as to such period that the self-regulatory consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of GSCC. All submissions should refer to file number SR–GSCC–92–04 and should be submitted by June 26, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–13147 Filed 6–4–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–30755; File No. SR–GSCC–92–05]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Filing Relating to the Netting of Forward-Settling Trades in Government Securities

May 28, 1982.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 14, 1992, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would allow GSCC to continue netting forward-settling trades.

Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of, and basis for, the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) On April 12, 1990, the Commission approved on a temporary basis, until April 30, 1992, a proposed rule change (SR–GSCC–90–01) [1] that expanded GSCC's netting service to include forward-settling trades in Government securities ("forward trades"). More recently, on April 30, 1992, the Commission extended, on a temporary basis until July 31, 1992, GSCC's rules relating to the netting of forward settling trades.[2] By this filing, GSCC requests that such authority be made permanent by the Commission or, in the alternative, that the Commission further extend on a temporary basis GSCC's authority to net forward trades.

In its approval order of April 12, 1990 (the "Approval Order"),[3] the Commission stated that, "in light of its significance to GSCC and its membership, the proposed netting service for forward-settling transactions should be carefully monitored before it becomes a permanent feature of GSCC's netting system." The Approval Order was a lengthy one; however, the essence of the Commission's concerns regarding the proposal may be said to have been the adequacy of each of the following: (1) GSCC's forward mark allocation payment process; (2) the revised Clearing Fund formula; and (3) GSCC's system prices. Each of these concerns is discussed below.

1. The Forward Mark Allocation Calculation

As was stated in the original rule filing (SR–GSCC–90–01), in designing a system for the netting of forward trades, GSCC considered fully applying mark-to-market requirements during the period between trade and settlement, in the same manner as is done for regular-way trading. That is, GSCC considered requiring Netting Members (hereinafter "members") to pay on a daily basis in cash the full amount of mark payments stemming from net settlement positions in forward-settling securities.

In view, however, of the potential for significant amounts of money to have to be passed through GSCC on a daily basis, which might on any particular day drain liquidity from a firm in an unpredictable manner, GSCC chose an alternative approach that realistically reflects, and sufficiently minimizes, the risk of disruption to the settlement process. This method provides for the daily collection of a percentage of any debit mark amount allocable to a forward-settling position (the "forward mark allocation amount") that ensures, on a per-CUSIP basis, that the failure of up to all of the five members with the

[1] Securities Exchange Act Release No. 27902 (April 12, 1990), 55 FR 15066.

[2] Securities Exchange Act Release No. 30661 (April 30, 1992), 57 FR 19654.

[3] Securities Exchange Act Release No. 27902 (April 12, 1990), 55 FR 15066.

largest debit mark levels on any given day would not disrupt GSCC's ability to successfully settle that day's Government securities trades.

GSCC's experience to date shows that this approach to the margining of forward trades strikes an appropriate balance between the need for a sufficient margin to ensure GSCC's liquidity and to prevent a loss upon liquidation of a member's position, versus the desire to not unduly drain funds from members. (The sufficiency of GSCC's margining process for forward trades also is supported by the preliminary conclusions of a comprehensive risk assessment of GSCC that will be forwarded to the Commission later this year.) Analyses done by GSCC indicate that, in the morning of a typical date for forward trades, when GSCC faces exposure equal to the difference between the amount of forward mark allocation ("FMA") payments collected on the previous business day (which has not yet been returned) and the amount of transaction adjustment paymnents ("TAP") owed to GSCC on such day (and not yet paid), the amount already "pre-collected" in FMA payments is a majority (often a large majority) of that day's TAP amount.

To the extent that GSCC has had concerns with its FMA process, it has been with the increasing activity in non-new-issue securities (in particular, zero coupon securities). Such activity typically is not as evenly spread among members as the activity in normally recurring issues (such as the weekly Bill issues and the monthly two-year and five-year Note issues). Instead, it tends to be more concentrated in a few members. For a particular CUSIP, this often leads to the total debit mark level of the five members with the largest such debit marks constituting a higher percentage of the daily liquidation exposure incurred by GSCC as regards that CUSIP than if the activity were more evenly spread. Currently, only a maximum of 75 percent of a member's debit mark is collected as FMA.

This matter, together with numerous other margining issues, was addressed in a recent filing (SR–GSCC–91–04) [4] by GSCC, wherein GSCC requested authority to raise the cap on a member's daily FMA payment amount from 75 percent of the calculation to 100 percent. This will increase the dollar amount collected by GSCC in the event that certain members create a relatively large exposure for GSCC vis-a-vis other members.

2. GSCC's Clearing Fund Formula

With regard to the sufficiency of FMA payments, GSCC notes that the Commission, in the Approval Order, indicated a concern that the FMA payment process provide "adequate collateral protection for forward-settling transactions independently from other liquidity sources designed to protect against risks stemming from the settling of regular-way trades." Of course, the source of liquidity protection for next-day trades are Clearing Funds deposits. Thus, the Commission has, in effect, indicated that the Clearing Fund formula must factor in exposure arising from next-day and forward trades independently of each other and cumulatively. GSCC's experience to date confirms that the formula does in fact do so, and that the nature of GSCC's margining process for forward trades, wherein such trades are both margined for Clearing Fund purposes and are subject to a separate margin requirement (the FMA payment process), is quite conservative and prudent in nature. This is particularly true in light of GSCC's recent rule filing (SR–GSCC–91–04) noted above.

GSCC's Clearing Fund formula provides for the collection of 125 percent of the member's average daily funds-only settlement amount over the most recent 20 business days and the greater of: (1) the margin amount on the member's net settlement positions taking into account offsetting positions averaged over the most recent 20 business days or (2) 50 percent of the margin amount for that business day on the member's net settlement positions calculated without taking into account offsetting positions. Currently, a member's net securities and funds-only settlement obligations arising from forward trades are factored into the calculation of such member's Clearing Fund requirement during the post-auction forward-settling period, except that such positions are factored into the 20-day averages only for purposes of determining the current day's margin calculation. GSCC's recently proposed rule filing, SR–GSCC–91–04, will change this to provide for GSCC to treat forward settlement positions for Clearing Fund calculation purposes essentially as it does all other net settlement obligations, thus providing for a smoother Clearing Fund collection process and greater amounts of margin received from members.

3. Prices

A significant event that has occurred since the issuance of the Approval Order is that GSCC now has close to two-years' worth of its own price volatility data. This data base now is used in assessing and monitoring the adequacy of its margin factors. GSCC hereby represents that the information contained in this data base is being and will continue to be considered on a periodic basis by GSCC's Membership and Standards Committee in reviewing the sufficiency of GSCC's margin factors.

It is noteworthy that GSCC has ensured, and will continue to ensure, the sufficiency of its margining process through the use of conservative margin factor criteria.

With regard to obtaining additional third party Government securities price volatility data, in the past, there has been no available source of data that was sufficiently comprehensive and accurate to consider as an alternative to GSCC's internal data base. Indeed, GSCC's own data base is likely always to be more precise than any third-party data source for off-the-run issues, because GSCC receives price data across a broad spectrum of issues and products and is not focused on leading issues within a maturity or product range.

Recently, however, private sector initiatives in the Government securities marketplace have arisen, such as the establishment of GOVPX, Inc., which have made significant steps toward disseminating the type of Government securities price information that would be of particular benefit to GSCC. In view of this, GSCC continues to evaluate the types of third-party price volatility information that are available and the usefulness of such information. GSCC notes in this regard that it continues to believe that its own data base would be able to serve as the most accurate and meaningful source of price volatility data on Government securities in existence if it were to receive trade data from its members on a time-stamped basis.

In sum, in view of GSCC's positive experience to date in the neeting of forward trades, the conservative nature of its margining process for forwards and the general strengthening of the process that has taken place, and its ability now to use internal price volatility data to assess the adequacy of its margin factors, GSCC believes that its method for margining forward trades is an appropriate one and that its

[4] Securities Exchange Act Release No. 30135 (December 31, 1991), 57 FR 942.

authority to net forward trades should be made permanent.

(b) The proposed rule change will encompass forward-settling Government securities transactions within the Netting System and, thus, will further promote the prompt and accurate clearance and settlement of securities transactions for which GSCC is responsible. It is therefore consistent with section 17A of the Act, and section 17A(b)(3)(A) of the Act in particular.

B. Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change, Received From Members, Participants, or Others

Comments on the proposed rule changes have not yet been solicited or received. Members will be notified of the rule filings, and comments will be solicited, by an Important Notice. GSCC will notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if its finds such longer period to be appropriate and publishes its reason for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Person making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of GSCC. All submissions should refer to File No. SR-GSCC-92-05 and should be submitted by June 26, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-13148 Filed 6-4-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-30743; File No. SR-NASD-92-13]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to a Vendor Fee for Distribution of Nasdaq Market Indices

May 27, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 14, 1992, the National Association of Securities Dealers, Inc. ("NASD or Association") filed with the Securities and Exchange Commission ("SEC or Commission") the proposed rule change as described in items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested person.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend part IX, section C of schedule D to the NASD By-Laws to establish a vendor charge for supplying Nasdaq index information to parties not receiving Nasdaq Level 1 and last sale information from the vendor. Below is the text of the proposed rule change. Proposed additions are in italics.

C. Special Options

* * * * *

7. Nasdaq Market Indices Permits vendor to process Nasdaq Level 1 and Last Sale data feeds solely for the purpose of supplying subscribers with real-time calculations of Nasdaq market indices. $500/month

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the SEC, the Association included statements concerning the purpose of the basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to establish a fee for distribution of a narrow subset of Nasdaq market data, *i.e.*, the Nasdaq indices. The fee would apply to any vendor that wishes to furnish subscribers with Nasdaq market indices without their having to subscribe to the Nasdaq Level I and Last Sale services. Currently, subscription to the Nasdaq Level 1 and Last Sale services is the only means by which a subscriber can obtain the real-time index data from a vendor. This filing was prompted by a request from at least one vendor that desires to supply Nasdaq indices, for analytic purposes, to a subset of its subscriber base. These subscribers apparently have no business need for the more expansive Nasdaq market data normally supplied along with the index information. Therefore, the NASD fashioned this rule proposal to accommodate the interested vendor (and its subscribers) in a cost effective manner that minimizes administrative burdens attendant to the vendor's provision of the service. For example, because the proposed fee will be paid by the vendor, the latter will not have the burden of collecting and verifying payment to the NASD subsidiaries of any terminal-based subscriber charges, in contrast to the established arrangement for vendor distribution of Nasdaq Level 1 and Last Sale services.

The NASD believes that the proposed rule change in consistent with section 15A(b)(5) of the Act. Section 15A(b)(5) requires that the NASD establish reasonable fees for its market data services and that the costs of providing those services be equitably allocated among the end users. In this instance, the NASD's fee tracks other established fees for data streams of Nasdaq market

information being provided for analytic purposes. Further, this proposal offers a less costly alternative to the end users who wish to receive Nasdaq market indices on a real-time basis, but have no business need for Nasdaq last sale or inside quotation information.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NSAD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to section 19(b)(3)(A)(ii) of the Act and subparagraph (e) of rule 19b–4 thereunder. The NASD has designated this proposal as "establishing or changing a due, fee, or other charge" under section 19(b)(3)(A)(ii) of the Act, which renders the rule effective upon the Commission's receipt of the filing. At any time within 60 days of the filing of such rule change, the Commission's may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communcations relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commissions's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by June 26, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deput Secretary.

[FR Doc. 92–13145 Filed 6–4–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–30744; File No. SR–NYSE–92–04]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Amendments to Rule 407, Transactions—Employees of Exchange, Member Organizations or Certain Non-Member Organizations, and Rescission of Rule 406(2), Accounts of Members and Allied Members

May 27, 1992.

On February 21, 1992, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and rule 19b-4 thereunder,[2] a proposed rule change to amend NYSE Rule 407, pertaining to transactions by Exchange employees, members and certain non-member organizations, and rescind NYSE Rule 406(2), pertaining to the accounts of members and allied members.

The proposed rule change was published for comment in Securities Exchange Act Release No. 30467 (March 11, 1992), 57 FR 9298 (March 17, 1992). No comments were received on the proposal.

The following is the text of the changes to NYSE Rule 407 (italics denote new language and brackets denote deletions):

Transactions—Employees of [Exchange] *Members,* Member Organizations *and the Exchange* [or Certain Non-Member Organizations]

Rule 407. (a) No member or member organization shall, without the prior written consent of the employer, [make:] *open a securities or commodities account or execute any transaction in which a member, allied member or employee associated with another member or member organization or an employee of the Exchange is directly or indirectly interested.*

In connection with accounts or transactions of members, allied members and employees associated with another member or member organization, duplicate confirmations and account statements shall be sent promptly to the employer.

[(1) A cash or margin transaction or carry a margin account in securities or commodities in which an employee of another member or member organization is directly or indirectly interested. Except in connection with transactions of an employee in Monthly Investment Plan type accounts, duplicate reports and statements shall be sent promptly to the employer.]

[(2) A cash or margin transaction or carry a margin account in securities or commodities in which an employee of the Exchange, or of any corporation of which the Exchange owns the majority of the capital stock, is directly or indirectly interested.]

[(3) A margin transaction or carry a margin account in securities or commodities in which an employee of a bank, trust company, insurance company, or of any other corporation, association, firm or individual engaged in the business of dealing, either as a broker or as principal, in stocks, bonds, or other securities in any form, bills of exchange, acceptances, or other forms of commercial paper, is directly or indirectly interested.]

(b) [(1)] No member, allied member [, registered representative] or *employee associated with* [officer of] a *member or* member organization shall have a securities or commodities account with respect to which *such person* [he] has *a financial interest or* the power, directly or indirectly, to make investment decisions, at another *member or* member organization, or a *domestic or foreign non-member broker-dealer, investment adviser, bank or other financial institution* [non-member organization or a bank] without the prior written consent of another person designated by the member or member organization under Rule 342(b)(1) to sign such consents and review such accounts.

[(2)] Persons having accounts referred to [in (1)] above shall arrange for duplicate *confirmations* [reports] and monthly statements of said accounts to be sent to another person designated by the member or member organization under Rule 342(b)(1) to review such accounts.

[(3) For the purpose of this rule accounts referred to in (1) above shall include, but are not limited to, the following: (A) securities and commodities accounts carried at

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

member of non-member organizations or at banks; (B) limited or general partnership interests in investment partnerships; (C) direct and indirect participations in joint accounts; and (D) legal interests in trust accounts, provided that with respect to trust accounts the member or member organization required to approve the account may waive the requirement to send duplicate reports and monthly statements for such accounts.]

* * * Supplementary Material

.10 Employees of Exchange.—An employee of the Exchange or any of its affiliated companies, *i.e., any corporation of which the Exchange owns the majority of the capital stock,* who wishes to open a securities or commodities account should apply for permission from the Secretary of the Exchange. A form of application can be obtained in the Office of the Secretary.

.11 For the purpose of this rule, accounts referred to in paragraph (b) above shall include, but are not limited to, the following: (A) securities and commodities accounts; (B) limited or general partnership interests in investment partnerships; (C) direct and indirect participations in joint accounts; and (D) legal interests in trust accounts, provided that with respect to trust accounts a member or member organization required to approve the account may waive the requirement to send duplicate reports and monthly statements for such accounts. [3]

.12 The requirement to send duplicate confirmations and statements shall not be applicable to transactions in unit investment trusts and variable contracts or redeemable securities of companies registered under the Investment Company Act of 1940, as amended, or to accounts which are limited to transactions in such securities, or to Monthly Investment Plan type accounts, unless the member or member organization employer requests receipt of duplicate confirmations and statements of such accounts.

[.20 Application of rule 407(3).—rule 407(3) applies to all employees of insurance companies without regard to whether they are compensated on a salary or commission basis. However, it is not considered applicable to independent insurance agents.

For the purpose of rule 407(3), a person who is clearly designated by the Charter or By-Laws of a bank, trust company, insurance company, etc., as an officer of such institution is not considered an "employee".]

NYSE Rule 407 governs the ability of members, member organizations and their employees to establish certain accounts. Specifically, rule 407(a) requires members and member organizations to obtain the prior written consent of employers to open accounts for employees of other members, member organizations, the Exchange and other specified finanical institutions, *e.g.,* banks and insurance companies. Rule 407(b) requires certain associated persons to obtain written consent from their employers prior to opening accounts outside that member or member organization. In addition, such persons are required to have duplicate confirmations and monthly statements sent to appropriate supervisory persons at their member organization employer.

The Exchange states that rule 407 is intended to facilitate a member's or member organization's supervision of its employees by providing the employer with information regarding employees' private securities transactions. The Exchange believes that the rule serves to protect against conflicts of interest which might arise from such private securities transactions and assists the member or member organization in monitoring transactions for violations of insider trading rules and use of manipulative or deceptive devices.

NYSE Rule 406 governs the designation of accounts by restricting member organizations carrying certain accounts. Rule 406(2) specifically prohibits member organizations from carrying the account of a member or allied member of another member organization without the prior written consent of that member or certain persons at that member organization, who must also receive duplicate confirmations and monthly account statements. In addition, rule 406(2) requires that clearing organizations report certain transactions.

The Exchange is proposing to amend rule 407 and rescind rule 406(2). Respecting rule 407(a), the amendments will eliminate the requirement in rule 407(a)(3) that a member or member organization receive the employer's prior written consent to carry margin accounts of employees of financial institutions (other than the Exchange or other member organizations). The Exchange believes that limiting this requirement to employees of Exchange members and member organizations and of the Exchange is appropriate because the Exchange's overall supervisory requirements do not extend to employees of other financial institutions.

Amendments to NYSE Rule 407(b) adding the word "employee" and other specific language should clarify that the provisions of the rule apply to all accounts in which members, allied members or employees associated with a member or member organization have a financial interest or the power to make investment decisions, regardless of where they are maintained (*e.g.,* at another member or member organization, or a domestic or foreign non-member broker-dealer, investment adviser, bank or other financial institution). In addition, new Commentary .11 will enumerate to which accounts rule 407 applies. New Commentary .12 to rule 407 will specify that the requirements to provide reports to employers will not be applicable to certain enumerated transactions (*e.g.,* mutal funds), unless specifically requested by the employer.

The Exchange also proposes to rescind rule 406(2), because the basic requirements applicable to members and allied members set forth therein will be incorporated by the amendments in NYSE Rule 407. Specifically, the restrictions on member organizations seeking to open accounts will now be contained in rule 407(a). Accordingly, the entire text of paragraph two of rule 406 will be deleted and paragraph one will comprise the entire text of rule 406.[4]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of section 6(b).[5] In particular, the Commission believes the proposal is consistent with the requirements of section 6(b)(5) in that it clarifies the restrictions contained in NYSE Rule 407. The amendments to rule 407(a) streamline the language of the prohibition applicable to member ogranizations opening certain accounts. Specifically, the Commission believes that requiring approval to open a securities or commodities account or execute a transaction for certain persons should reveal existing and potential conflicts of interest as well as alert member organizations that additional surveillance could be appropriate. This disclosure, in turn, should promote just and equitable

[3] Proposed Commentary .11 of Rule 407 will apply to both paragraphs (a) and (b) of Rule 407. See letter from Donald van Weezel, Managing Director, NYSE, to Edith Hallahan, Attorney, SEC, dated May 12, 1992, correcting the text of Commentary .11, which originally applied only to Rule 407(b). The NYSE also made a minor word change to this commentary.

[4] The number "(1)" will be deleted from Rule 406(1) such that this text will simply be referred to as Rule 406.

[5] 15 U.S.C. 78f(b) (1988).

principles of trade, prevent fraudulent and manipulative acts, and, in general, protect investors and the public. These section 6(b)(5) requirements should also be furthered by the conditions in rule 407 (a) and (b) that duplicate confirmations and account statements should be sent to appropriate persons. The Commission also believes that it is appropriate to limit these restrictions by deleting rule 407(a)(3), which extends this rule to employees of finanical institutions over which the Exchange does not retain regulatory jurisdiction.

For the same reasons, the Commission also finds that it is consistent with the Act to extend the prohibition of rule 407(b) to employees of members, allied members and member organizations. This requirement that certain persons obtain the approval of their employer before opening certain accounts should also ensure that disclosure of conflicts of interest or improper trading is made and employers are aware of the transactions of their employees. Moreover, the Commission believes that adding language that extends the application of rule 407(b) to an account to which a member, allied member, or employee associated with a member or member organization has a financial interest should broaden the scope of the rule by extending it beyond individuals with investment-making authority. The Commission finds that this should further the above-stated benefits of rule 407 by capturing those accounts that could pose problems for employers if not carefully monitored.

The Commission also believes that the proposed rule change is consistent with section 6(b)(1), which requires that an exchange have the capacity to enforce compliance by its members and persons associated with its members with the Act, the rules therunder and the rules of the exchange.[6] The proposed rule change should assist members and member organizations in monitoring transactions by their employees that may violate the Act or the rules of the Exchange.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (SR–NYSE–92–04) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–13144 Filed 6–4–92; 8:45 am]

BILLING CODE 8010–01–M

[6] 15 U.S.C. 78f(b)(1) (1988).

[7] 15 U.S.C. 78s(b)(2)((1988).

[8] 17 CFR 200.30–3(a)(12) (1991).

[Release No. 35–25574]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

June 3, 1992.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by June 19, 1992 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Niagara Mohawk Power Corporation (70–7962)

Niagara Mohawk Power Corporation ("Niagara"), 300 Erie Boulevard West, Syracuse, New York 13202, a New York public-utility holding company exempt from registration under section 3(a)(2) of the Act pursuant to rule 2, has filed an amendment restating its application filed under sections 9(a)(2) and 10 of the Act.[1] Niagara proposes to acquire all of the issued and outstanding shares of common stock, no par value ("Syracuse Common Stock"), of Syracuse Suburban Gas Company, Inc. ("Syracuse"), a New York public-utility company.

Niagara provides gas service in areas totalling approximately 4,500 square miles in central, northern and eastern New York. In addition, Niagara provides electric service in an area of approximately 24,000 square miles extending from Lake Erie to the borders of New England, Canada and Pennsylvania.

Syracuse provides natural gas services to approximately 4,500 customers in the village of East Syracuse, New York and the immediate vicinity. Syracuse's service territory is completely surrounded by the gas service territory of Niagara and Syracuse takes its gas service exclusively through the pipelines of Niagara. There are currently 42,000 issued and outstanding shares of Syracuse Common Stock, held by 13 shareholders.

Pursuant to an Amended and Restated Merger Agreement ("Merger Agreement"), dated March 13, 1992 between Niagara and Syracuse, Niagara will acquire the Syracuse Common Stock and Syracuse will be merged with and into NMPC ("Newco"), a New York corporation created by Niagara for the sole purpose of effecting the acquisition of Syracuse. Following the merger, Newco will be a wholly owned subsidiary company of Niagara and will change its name to NM Suburban Gas, Inc., ("NM Suburban").[2] In connection with the merger and as part of the consideration for the acquisition, each share of Syracuse Common Stock will be converted into the right to receive, on the closing date, that number of shares of Niagara common stock, par value $1.00 per share ("Niagara Common Stock"), having an aggregate value of approximately $6,120,000, and to receive, periodically after the closing of the merger, a certain number of shares of additional Niagara Common Stock.

For the Commission, by the Division of the Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–13355 Filed 6–3–92; 12:45 p.m]

BILLING CODE 8010–01–M

[1] An original notice of the filing of the application was issued by the Commission on May 8, 1992 (HCAR No. 25529).

[2] Pursuant to the Merger Agreement, NM Suburban will have the assets and liabilities and certain authorizations of Syracuse after the merger. The liabilities of Syracuse as of December 31, 1991 were in the amount of approximately $3,533,000.00. In addition, the amendment to the application states that, on April 27, 1992, Syracuse redeemed each outstanding share of its 5% preferred stock, par value $100 per share, and its 5.76% preferred stock, par value $25 per share, at redemption prices of $102 per share and $26.50 per share, respectively.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 92-10; Notice 2]

Determination That Nonconforming 1991 BMW 850i Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of determination by the Administrator of NHTSA that nonconforming 1991 BMW 850i passenger cars are eligible for importation.

SUMMARY: This notice announces the determination by the Administrator of NHTSA that 1991 BMW 850i passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the U.S. certified 1991 BMW 850i), and they are capable of being readily modified to conform to the standards.

DATES: The determination is effective June 5, 1992.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202-366-5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that

"(I) the motor vehicle is * * * substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 [of the Act], and of the same model year * * * as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards * * *."

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 40 CFR part 591. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register.**

Wallace Environmental Testing Laboratories, Inc. of Houston, Texas (Registered Importer No. R-90-005) petitioned NHTSA to determine whether 1991 BMW 850i passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on March 3, 1992 (57 FR 7613) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has determined to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS-7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP #10 is the vehicle eligibility number assigned to vehicles admissible under this notice of final determination.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby determines that a non-U.S- certified 1991 BMW 850i is substantially similar to a 1991 BMW 850i originally manufactured for importation into and sale in the United States and certified under section 114 of the National Traffic and Motor Vehicle Safety Act, and that the non-U.S. certified 1991 BMW 850i is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Authority: 15 U.S.C. 1397(c)(3) (A)(i)(I) and (C)(iii); 49 CFR 593.8; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on: June 1, 1992.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 92-13162 Filed 6-4-92; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. 92-11; Notice 2]

Determination that Nonconforming 1989 BMW 520iA Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of determination by the Administrator of NHTSA that nonconforming 1989 BMW 520iA passenger cars are eligible for importation.

SUMMARY: This notice announces the determination by the Administrator of NHTSA that 1989 BMW 520iA passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the 1989 BMW 525iA), and they are capable of being readily modified to conform to the standards.

DATES: The determination is effective June 5, 1992.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202-366-5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and After January 31, 1990, unless NHTSA has determined that

"(I) the motor vehicle is * * * substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 [of the Act], and of the same model year * * * as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards * * *."

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis

of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register.**

G&K, Automotive conversion, Inc. of Anaheim, California (Registered Importer No. R–90–007) petitioned NHTSA to determine whether 1989 BMW 520iA passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on March 9, 1992 (57 FR 8377) to afford an opportunity for public comment. The reader is referrred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has determined to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP #9 is the vehicle eligibility number assigned to vehicles admissible under this notice of final determination.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby determines that a 1989 BMW 520iA is substantially similar to a 1989 BMW 525iA originally manufactured for importation into and sale in the United States and certified under section 114 of the National Traffic and Motor Vehicle Safety Act, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Authority: 15 U.S.C. 1397(c)(3) (A)(i)(I) and (C)(iii); 49 CFR 593.8; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on: June 1, 1992.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 92–13163 Filed 6–4–92; 8:45 am]

BILLING CODE 4910–59–M

Determination that Nonconforming 1988 Mitsubishi Galant VX Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of determination by the Adminsitrator of NHTSA that nonconforming 1988 Mitsubishi Galant VX passenger cars are eligible for importation.

SUMMARY: This notice announces the determination by the Administrator of NHTSA that 1988 Mitsubishi Galant VX passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the 1988 Mitsubishi Sigma), and they are capable of being readily modified to conform to the standards.

DATES: The determination is effective June 5, 1992.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that

"(I) the motor vehicle is * * * substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 [of the Act], and of the same model year * * * as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards * * *."

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register.**

Champagne Imports Inc. of Lansdale, Pennsylvania (Registered Importer No. R–90–009) petitioned NHTSA to determine whether 1988 Mitsubishi Galant VX passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on March 3, 1992 (57 FR 7614) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has determined to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP #8 is the vehicle eligibility number assigned to vehicles admissible under this notice of final determination.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby determines that a 1988 Mitsubishi Galant VX is substantially similar to a 1988 Mitsubishi Sigma originally manufactured for importation into and in the United States and certified under section 114 of the National Traffic and Motor Vehicle Safety Act, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Authority: 15 U.S.C. 1397(c)(3)(A)(i) (I) and (C)(iii); 49 CFR 593.8; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on June 1, 1992.

William A. Boehly,

Associate Administrator for Enforcement

[FR Doc. 92–13164 Filed 6–4–92; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 91–67; Notice 2]

Determination that Nonconforming 1989 Mercedes Benz 300SL Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of determination by the Administrator of NHTSA that nonconforming 1989 Mercedes Benz 300SL passenger cars are eligible for importation.

SUMMARY: This notice announces the determination by the Administrator of NHTSA that 1989 Mercedes Benz 300SL passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and

certified by its manufacturer as complying with the safety standards (the 1989 Mercedes Benz 560SL), and they are capable of being readily modified to conform to the standards.

DATES: The determination is effective June 5, 1992.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that

"(I) the motor vehicle is * * * substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 [of the Act], and of the same model year * * * as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards * * *."

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the Federal Register.

Champagne Imports Inc. of Lansdale, Pennsylvania (Registered Importer No. R–90–009) petitioned NHTSA to determine whether 1989 Mercedes Benz 300SL passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on February 10, 1992 (57 FR 4907) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has determined to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP #7 is the vehicle eligibility number assigned to vehicles admissible under this notice of final determination.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby determines that a 1989 Mercedes Benz 300SL is substantially similar to a 1989 Mercedes Benz 560SL originally manufactured for importation into and sale in the United States and certified under section 114 of the National Traffic and Motor Vehicle Safety Act, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(iii); 49 CFR 593.8; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on: June 1, 1992.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 92–13165 Filed 6–4–92; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 92–26; Notice 1]

Notice of Receipt of Petition for Determination That Nonconforming 1989 Bentley Turbo R Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Request for comments on petition for determination that nonconforming 1989 Bentley Turbo R passenger cars are eligible for importation.

SUMMARY: This notice requests comments on a petition submitted to the National Highway Traffic Safety Administration (NHTSA) for a determination that a 1989 Bentley Turbo R that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily modified to conform to the standards.

DATES: The closing date for comments on the petition is July 6, 1992.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9:30 a.m. to 4 p.m.]

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that

"(I) the motor vehicle is * * * substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 [of the Act], and of the same model year * * * as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards * * *."

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the Federal Register.

Liphardt & Associates, Inc. of Ronkonkoma, New York (Registered Importer No. R–90–004) has petitioned NHTSA to determine whether 1989 Bentley Turbo R passenger cars manufactured by Rolls-Royce Motors are eligible for importation into the United States. The vehicle which Liphard believes is substantially similar is the 1989 Bentley Turbo R that Rolls-Royce Motors offered for sale in the United States and certified as conforming to all applicable Federal motor vehicle safety standards.

The petitioner states that it has carefully compared the 1989 Bentley Turbo R with its U.S.-certified counterpart, and found that they are substantially similar with respect to most applicable Federal motor vehicle

safety standards. Specifically, the petitioner claims that the 1989 Bentley Turbo R is identical to its U.S.-companion model with respect to compliance with Standards Nos. 102 Transmission Shift Lever Sequence * * *., 103 Defrosting and Defogging Systems, 104 Windshield Wiping and Washing Systems, 105 Hydraulic Brake Systems, 106 Brake Hoses, 107 Reflecting Surfaces, 109 New Pneumatic Tires, 111 Rearview Mirrors, 113 Hood Latch Systems, 116 Brake Fluids, 124 Accelerator Control Systems, 201 Occupant Protection in Interior Impact, 202 Head Restraints, 203 Impact Protection for the Driver From the Steering Control System, 204 Steering Control Rearward Displacement, 205 Glazing Materials, 206 Door Locks and Door Retention Components, 207 Seating Systems, 209 Seat Belt Assemblies, 210 Seat Belt Assembly Anchorages, 211 Wheel Nuts, Wheel Discs and Hubcaps, 212 Windshield Retention, 214 Side Door Strength, 216 Roof Crush Resistence, 219 Windshield Zone Intrusion, 301 Fuel System Integrity, and 302 Flammability of Interior Materials.

The petitioner also contends that the 1989 Bentley Turbo R is capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 101 Controls and Displays: Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp.

Standard No. 108 Lamps, Reflective Devices and Associated Equipment: (a) Installation of U.S.- model headlamp assemblies which incorporated sealed beam headlamps and front sidemarkers; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarkers; (c) installation of high mounted stop lamp.

Standard No. 110 Tire Selection and Rims: Installation of a tire information placard.

Standard No. 114 Theft Protection: Installation of a buzzer relay in the steering lock electrical circuit, and a warning buzzer.

Standard No. 115 Vehicle Identification Number: Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 Power-Operated Window Systems: Rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 Occupant Crash Protection: Installation of an ignition switch-actuated seat belt warning buzzer.

Additionally, the petitioner states that the energy absorbers on the front bumper of the 1989 Bentley Turbo R must be replaced to comply with the Bumper Standard found in 49 CFR part 581.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: July 6, 1992.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(II) and (C)(iii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on June 1, 1992.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 92-13166 Filed 6-4-92; 8:45 am]

BILLING CODE 4910-59-M

UNITED STATES TRADE REPRESENTATIVE

Review of Implementation of the U.S.-Japan Semiconductor Arrangement

AGENCY: Office of the United States Trade Representative (USTR).

ACTION: Request for written comments by June 24, 1992 in connection with review of implementation of the U.S.-Japan Semiconductor Arrangement.

SUMMARY: The Trade Policy Staff Committee (TPSC) is seeking the views of interested parties on the implementation of the U.S.-Japan Semiconductor Arrangement (Arrangement). The review will assess all factors relevant to the market access provisions of the Arrangement. TPSC invites written comments which provide views on the implementation of these factors.

FOR FURTHER INFORMATION CONTACT: Wendy Silberman, Office of Industry, USTR, (202) 395-6160 (for technical and policy issues) or Tim Reif, Office of the General Counsel, USTR, (202) 395-6800 (for legal issues).

SUPPLEMENTARY INFORMATION:

I. General

Reflecting concern about the lack of progress in improving access to the Japanese market for foreign semiconductors, Ambassador Hills announced on May 27, 1992 the initiation of an interagency review of the 1991 U.S.-Japan Semiconductor Arrangement. USTR has been monitoring compliance with the Arrangement since it came into effect on August 1, 1991. Based on this monitoring, Ambassador Hills has decided that a full interagency review should be conducted to assess all factors relevant to the market access provisions of the Arrangement. These factors inlcude, among others: Foreign market share; design-ins of foreign semiconductors and long-term relationships between foreign and Japanese firms; efforts by the Government of Japan to promote foreign access to Japan's semiconductor market and the impact of these efforts; and possible additional steps that may be required to achieve the objectives of the Arrangement.

Copies of the Arrangement are available in the USTR Reading Room (room 101).

II. Written Comments

Written comments are invited on the implementation of the U.S.-Japan Semiconductor Arrangement. All comments should be submitted in 20 copies, by noon, Wednesday, June 24, 1992, to Carolyn Frank, Executive Secretary, TPSC, room 414, 600 Seventeenth Street, NW., Washington, DC 20506.

Any submissions which include business confidential material must be clearly marked as such on the cover page (or letter) and succeeding pages. Such submissions must be accompanied by a nonconfidential summary. Nonconfidential information received will be available for public inspection by appointment in the USTR Reading Room, 600 Seventeenth Street, NW., room 101, Washington, DC, Monday through Friday, 10 a.m. to 12 noon and 1 p.m. to 4 p.m. For an appointment call Brenda Webb on (202) 395-6186.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 92-13204 Filed 6-4-92; 8:45 am]

BILLING CODE 3190-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 109
Friday, June 5, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, June 10, 1992.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Proposed 1992 Federal Reserve Automation Services (FRAS) budget.
2. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to:

Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: June 3, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-13292 Filed 6-3-92; 8:45 am]

BILLING CODE 6210-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 11:00 a.m., Wednesday, June 10, 1992, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed building renovation projects within the Federal Reserve System.
2. Proposals regarding automation consolidation within the Federal Reserve System.
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 3, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-13293 Filed 6-3-92; 10:03 am]

BILLING CODE 6210-01-M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 10:00 a.m., June 15, 1992.

PLACE: 5th Floor, Conference Room, 805 Fifteenth Street, NW, Washington, DC

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the May 18, 1992, Board meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. Review of Peat Marwick audit report, "Pension and Welfare Benefits Administration Review of the Thrift Savings Plan Withdrawal Operations at the United States Department of Agriculture, Office of Finance and Management, National Finance Center."

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, Office of External Affairs, (202) 523-5660.

Dated: June 2, 1992.

Francis X. Cavanaugh,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 92-13274 Filed 6-2-92; 8:45 am]

BILLING CODE 6760-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of June 8, 1992.

A closed meeting will be held on Tuesday, June 9, 1992, at 2:30 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, June 9, 1992, at 2:30 p.m., will be:

Institution of administrative proceedings of an enforcement nature.

Settlement of administrative proceedings of an enforcement nature.

Settlement of injunctive actions.

Institution of injunctive action.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Kaye Williams at (202) 272-2400.

Dated: June 2, 1992.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-13387 Filed 6-3-92; 1:54 pm]

BILLING CODE 8010-01-M

federal register

Friday
June 5, 1992

Part II

Department of Education

34 CFR Parts 425, 426, 431, etc.
Adult Education and Literacy Programs; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 425, 426, 431, 432, 433, 434, 435, 436, 437, 438, 441, 460, 461, 462, 463, 464, 471, 472, 473, 474, 475, 476, 477, 489, 490, and 491

RIN 1830-AA10

Adult Education and Literacy Programs

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends existing regulations that govern various adult education and literacy programs and adds regulations for four new programs: State Literacy Resource Centers, National Workforce Literacy Strategies, Functional Literacy for State and Local Prisoners, and Life Skills for State and Local Prisoners. These amendments are needed to implement the National Literacy Act of 1991 and certain new program authorities enacted in Public Law 102-103. The regulations incorporate statutory changes and provide rules for applying for and expending the Federal funds under these programs.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Joan Seamon, U.S. Department of Education, 400 Maryland Avenue, SW., room 4428, Mary E. Switzer Building, Washington, DC 20202-7240. Telephone: (202) 732-2270. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: On October 28, 1991, the Secretary published a notice of proposed rulemaking (NPRM) in the **Federal Register** (56 FR 55542). The public was given 60 days to submit comments.

The NPRM summarized the major statutory provisions enacted in the National Literacy Act and Public Law 102-103 and included a discussion of the major issues in the proposed regulations (56 FR 55542-55546). Significant changes since publication of the NPRM are described in the following analysis of comments and changes.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 99 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

Some issues are grouped according to subject, with appropriate sections of the regulations referenced in parentheses. Other substantive issues are discussed under the section of the regulations to which they pertain.

Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed. The Secretary also received a number of requests for administrative guidance or interpretations of the statute or regulations. Administrative guidance and interpretations will be provided by the Secretary on a case-by-case basis, as necessary.

Direct and Equitable Access to Federal Funds Under the Basic Grant Program (§ 461.12(b))

Comments: The Secretary received numerous comments concerning the statutory requirement, added by the National Literacy Act, that local educational agencies, public or private nonprofit agencies, community-based organizations, correctional education agencies, postsecondary educational institutions, and institutions that serve educationally disadvantaged adults will be provided direct and equitable access to all Federal funds provided under this part. The NPRM proposed to implement this requirement by providing that direct and equitable access must include: (1) The right to submit applications directly to the State educational agency (SEA) for those funds; and (2) use by the SEA of a process for selecting recipients of those funds that gives each agency, institution, and organization a fair chance of receiving an award.

Commenters from several States asked that their States' current systems of fund distribution not be disturbed. The commenters stated that the existing systems are effective and efficient in meeting the adult education and literacy needs of their States. Some of these commenters asked that States be allowed to continue to use sub-State entities to distribute the funds. Others were concerned that the regulations might require set-asides for the various categories of eligible recipients.

Some commenters were concerned that the new Federal requirement would conflict with State law. Some commenters also stated that the new requirement would impose an administrative burden on the SEA.

Other commenters expressed concern that community-based organizations and volunteer groups would be denied an opportunity for funding. The commenters asked for assurances that they would have a fair opportunity to receive funding. Some commenters were also concerned that the new statutory criteria for selecting recipients, including past effectiveness (see § 461.31(d)), could be used by States to deny funding to these applicants. One commenter asked if the regulations would preclude an application by a State correctional agency on behalf of the State correctional system.

Discussion: By adding the requirement for direct and equitable access, Congress clearly intended to allow all eligible entities to apply for the funds and have a fair chance of receiving an award. The Secretary is particularly concerned that the decision-making process in selecting award recipients is such that this congressional intent is carried out. For example, a system under which some applicants for the funds are also making decisions as to whether other competing applicants should receive funding would create a conflict of interest, and would not meet the new requirements of the law. Moreover, from the comments received, it appears that very few existing State systems, and no State laws, will have to be modified to meet the new statutory requirement for distribution of Federal funds.

The Secretary cannot waive the statutory requirement. However, the Secretary is not aware of any State law that precludes a State from distributing the funds in accordance with the statute and regulations. With respect to the issue of administrative burden, the Secretary does not believe that some increase in burden on the SEA can be avoided, given the change in the Act.

The Act and regulations do not require set-asides for the various categories of entities that are eligible for funding. All eligible entities must be given an opportunity to apply to carry out the activities funded by the SEA in accordance with the Act and regulations. The Act and regulations do not preclude voluntary combinations of eligible applicants from applying for funding. For example, a State correctional system, as described by the commenter, could apply.

The regulations are designed to ensure that all eligible entities have a fair opportunity to apply for and receive funds. None of the statutory criteria that the State must consider, including past

effectiveness, should be used in a way that would preclude any category of eligible entity from having that opportunity. However, the Secretary expects States to distribute funds to those entities that can best provide services to the individuals targeted by the Act.

Changes: None.

Eligibility for Funding Under the Basic Grant Program (§ § 461.12(b) and 461.30(a))

In the NPRM, the Secretary noted that the new statutory requirement for direct and equitable access to funds under the basic grant program (proposed § 461.12(b)) applies to a slightly different list of entities than the statutory list of eligible entities reflected in proposed § 461.30(a). Both lists included LEAs, public or private nonprofit agencies, community-based organizations, correctional education agencies, and postsecondary educational institutions. However, the statutory list of eligible parties, repeated in proposed § 461.30(a), also includes other institutions that have the ability to provide literacy services to adults and families. The statutory access requirement in proposed § 461.12(b) did not specifically include these institutions but did include institutions that serve educationally disadvantaged adults. The Secretary invited comments on how best to reconcile these statutory requirements.

Comments: The comments received by the Secretary reflected nearly universal agreement that the two lists should be reconciled, since it would make no sense to have some entities eligible to apply but without direct and equitable access to the funds, or vice-versa. The Secretary also received comments suggesting that various specific types of entities be added to the lists.

Discussion: The Secretary agrees that the lists should be made consistent. However, since the various suggested additions to the lists were of entities already included under broader categories, such as "public or private non-profit agencies," the Secretary has not added any non-statutory categories.

Changes: Sections 461.12(b) and 461.30(a) have been modified to include the same list of entities.

Indicators of Program Quality (§§ 461.3(b)(7), 461.12(a)(3), and 461.14(b))

Comments: Numerous commenters stated that a wide variety of groups, including volunteer organizations and other service providers, should be involved in the development of the States' indicators of program quality. One commenter specifically stated that the indicators should be reviewed by the State Job Training Coordinating Council. Another commenter objected to the requirement in § 461.14(b) that the State plan be amended to include the indicators, stating that the amendment process would be burdensome for the States. The commenter pointed out that the States must amend their plans in 1992 to incorporate provisions relating to the National Literacy Act and that the amendment in 1993 incorporating the indicators would be the second in two years.

Other commenters asked the Secretary to clarify the statement in the preamble to the NPRM that States are encouraged, to the extent appropriate, to develop indicators that are consistent with any similar standards developed under the Job Training Partnership Act, the Carl D. Perkins Vocational and Applied Technology Education Act, or the Job Opportunities and Basic Skills Program. These commenters were concerned that the Secretary might be requiring that the indicators be identical to those other standards.

Discussion: The regulations provide adequate protections to ensure that all interested groups are involved in the development of the indicators. As required by the Act, § 461.3(b)(7) provides that the indicators must be developed and implemented in consultation with a widely representative group of appropriate experts, educators, and administrators. Moreover, by requiring that the indicators be included in the State plan through the amendment process, which includes public hearings, the Secretary has ensured that all interested parties can participate. While the amendment requirement imposes some burden on the States, the Secretary believes that public involvement in the development of the indicators is so important that the requirement in § 461.14(b) should be retained. The amendment process also ensures an opportunity for review by the State Job Training Coordinating Council. (See § 461.13(c)(1)(ii).) To minimize burden, States are encouraged to submit the amendment with any other changes to the State plan that are needed in 1993.

The Secretary's statement in the preamble concerning standards under other Federal laws did not constitute a requirement, since none exists in the Act. Moreover, the Secretary did not intend to imply that the indicators under the Adult Education Act should necessarily be identical to standards developed under other laws. However, where common goals exist among Federal programs, the Secretary continues to believe that States should develop indicators and standards, under the various Federal laws, that are consistent to the extent appropriate. It is up to the States to determine the extent to which this can be achieved.

Changes: None.

Gateway Grants (§ 461.30(c))

Section 461.30(c) incorporates a new statutory requirement that States use funds provided under the basic grant program for competitive 2-year grants to public housing authorities for literacy programs and related activities. The Act requires that any public housing authority that receives a grant under this provision consult with local adult education providers in conducting programs and activities with assistance provided under the grant. Any grant provided under this provision is to be referred to as a "Gateway Grant." In the NPRM the Secretary proposed to give States flexibility in determining the amount of funds to be used for this purpose.

Comments: Two commenters objected to the consultation requirement, stating that consultation after a Gateway Grant is made would serve no purpose. Some commenters stated that recipients of Gateway Grants should meet the same cooperation and accountability requirements as community-based organizations and other recipients under the basic grant program.

One commenter asked that the definition of public housing authority include emergency and transitional shelters.

Several commenters asked for clarification concerning the amount of funds to be provided for Gateway Grants. One commenter requested that the regulations include procedures that a State must use in making these grants. Three commenters supported the flexibility provided in the proposed regulations.

Discussion: The Secretary interprets the statutory consultation requirement to apply after the grant is made.

Applicants for and recipients of Gateway Grants are subject to the same statutory and regulatory requirements as other recipients under the basic grant program.

The Secretary has consulted with the Department of Housing and Urban Development about emergency and transitional shelters. These shelters are not normally operated by public housing authorities and therefore are not included in the definition.

States are required to use some funds for Gateway Grants. As noted in the NPRM, the Secretary will give States flexibility in deciding the amount of

funds to be provided for Gateway Grants, since the statute does not specify an amount. Although the Secretary does not see any need for Federal regulations to specify special procedures for awarding these grants, the Secretary will provide technical assistance on program implementation, as needed.

Changes: As proposed in the NPRM, and in the absence of a definition in the National Literacy Act, the Secretary has adopted the definition of "public housing authority" used by the Department of Housing and Urban Development.

Part 460—Adult Education—General Provisions

Section 460.3 What Regulations Apply to the Adult Education Programs?

In the NPRM, the Secretary proposed to exempt the adult education and literacy discretionary grant programs from a provision in the Education Department General Administrative Regulations (EDGAR) that limits financial and performance reports to annual submissions. In some cases, to ensure that grant projects are making adequate progress, the Secretary stated that he might propose to require reports more frequently than annually. Any such reporting requirements would first be submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980.

Comments: Several commenters objected to the proposed change, although most of the commenters mistakenly believed that the proposed regulation would apply to the State basic grant program as well as to the discretionary grant programs under the Act. The commenters objected both to the cost and burden of reporting on performance more frequently than annually.

Discussion: The exemption only applies to the discretionary grant programs under the Act, not the State basic grant program. For discretionary grant programs, reporting would not be required more frequently than annually if the information is not necessary to ensure program integrity and accountability or if the information is available from other sources, such as continuation applications or ongoing Federal evaluation activities. Moreover, any such requirement would have to be approved by OMB under the Paperwork Reduction Act, at which time the public would have the opportunity to comment on the requirement, an additional assurance that any burden would be kept to a minimum.

Changes: None.

Section 460.4 What Definitions Apply to the Adult Education Programs?

Comments: Several commenters objected to the proposal to remove a definition of the term "expansion." The commenters stated that removal of the definition might restrict their ability to apply for and receive funding under the State basic grant program.

Most commenters supported the definition of "literacy" that was included in the NPRM. One commenter stated that the regulations should require that all States adopt this definition of literacy, in order to obtain consistency throughout the Nation.

Another commenter suggested that the definition of "literacy" be expanded to be consistent with the basic skills listed in the SCANS report. (The Secretary's Commission on Achieving Necessary Skills (SCANS) was established in February 1990 by the U.S. Secretary of Labor and charged with identifying and defining the skills needed in the American workplace. In May 1991, SCANS produced What Work Requires of Schools, a document defining a set of competencies and foundation skills required for effective job performance. A final report, American Know-How: Producing the Using Skills on the Job, is being issued by SCANS.) A second commenter suggested that the term "problem solving" should be defined to include the abilities listed in proposed § 473.6 and abilities in synthesis.

Discussion: As noted in the preamble to the NPRM, the National Literacy Act allows a variety of entities to have access to funds under the State basic grant program. (See §§ 461.12(b) and 461.30(a).) The definition of "expansion" is no longer needed.

The Secretary has no authority to apply the definition of "literacy" beyond the Federal programs. As noted in the preamble to the NPRM, the National Literacy Act defines "literacy," but only as that term is used in the National Literacy Act. To ensure uniform administration of all of the Department's adult education and literacy programs, the Secretary proposed to make the definition apply to all of the regulations for these programs.

The Secretary cannot change the definition as applied to the National Literacy Act. The Secretary therefore has not made the revision suggested by the commenter concerning the SCANS report, which is not entirely consistent with the statutory definition incorporated in these regulations. The Secretary also has not revised the definition of "literacy" in response to the comment on problem solving, since the Act does not appear to use the term "problem solving" consistently (for example, compare sections 371(a)(3)(E) and 371(c)(2)(B)(v)). However, in response to the commenter's suggestion, the Secretary has made a change in § 473.6. (See the discussion below following the heading for that section.)

Changes: None.

Part 461—Adult Education State-Administered Basic Grant Program

Section 461.46 What Requirements for Program Reviews and Evaluations Must be Met by a State?

Comments: One commenter objected to the requirement in § 461.46 that the State annually make public the results of program evaluations. The commenter mistakenly believed that this would require the identification of specific recipients.

One SEA recommended that the regulations require States to report the level of funding provided to each type of grant recipient in addition to the information already required by § 461.46.

Discussion: States may satisfy the annual publication requirement by releasing aggregate results of program reviews and evaluations. Specific recipients do not have to be identified, although a State may choose to do so.

Under the Act States are required to report the number and percentages of grant recipients by type. Given the amendments to the Act concerning access to funding and eligibility (see §§ 461.12(b) and 461.30(a)), the Secretary agrees that this additional information is needed to ensure program accountability.

Changes: A new paragraph (d)(1)(i)(B) has been added to § 461.46.

Section 461.50 What are a State's Responsibilities Regarding a State Advisory Council on Adult Education and Literacy?

Section 461.51 What are the Membership Requirements of a State Advisory Council?

Comments: Two commenters stated that the regulations should preclude a Governor from unilaterally taking part or all of an SEA's administrative funds for a State advisory council. Two commenters requested that the regulations specify that it is the Governor who decides whether to establish a council and who certifies the establishment and membership of the council.

Discussion: The Governor has clear discretion to use up to five percent of the funds provided under the State

Literacy Resource Centers Program to establish or support a State advisory council. (See § 464.40.) Moreover, the Act now provides that a State advisory council must be appointed by, and be responsible to, the Governor, although the council must advise the SEA and other State agencies as well as the Governor. Under the Act, the basic grant is made to the SEA, and the SEA's administrative funds clearly still can be used to establish or support a council. The Secretary does not believe that Federal regulations are appropriate in this area. The Secretary presumes that Governors and SEAs will work together to resolve any concerns regarding the use of basic grant administrative funds for a State advisory council.

The Secretary has chosen to retain the statutory language that provides for the "State" to establish a council and to certify the establishment and membership of the council. This is properly a matter for each State to determine.

Changes: None.

Part 464—State Literacy Resource Centers Program

Section 464.3 What Kinds of Activities may be Assisted?

Comments: One commenter stated that the regulations should require centers to serve those persons most educationally disadvantaged and in need of assistance.

Discussion: The purposes of the State literacy resource centers are set forth in section 356(a) of the Act (20 U.S.C. 1208aa(a)) and repeated in § 464.1. The centers will assist other agencies and organizations that deliver literacy instruction but will not themselves provide direct instruction to students. (See section 356(h) of the Act and § 464.11.)

Note: Although no formal comments were received, the Secretary has been informed that some States may wish to use funds under this program to provide the services and activities set forth in the Act but without establishing a center to provide this assistance. To clarify this matter, the Act specifically requires that the funds under this program be used for State or regional centers to provide the services and activities set forth in this section of the regulations.

Changes: None.

Section 464.10 How do States Apply?

Comments: One commenter expressed concern that the proposed regulations did not include provisions for evaluating the performance of State literacy resource centers. Another commenter expressed concern that the regulations did not ensure that the centers would have the capacity to serve the entire literacy service community.

Discussion: The Secretary will monitor the performance of the centers, including the collection of appropriate information through annual performance reports authorized by the Education Department General Administrative Regulations (EDGAR) (34 CFR 80.40). Performance reporting under EDGAR will include such matters as a comparison of actual accomplishments to the objectives of the centers as set forth in the approved applications. This should be sufficient to ensure that the centers are effective in carrying out the purposes of the Act, including access to the services and activities of the center by the entire literacy service community.

Changes: None.

Comments: Some commenters expressed concern with proposed § 464.10(e), which provides that a State application remains in effect during the period of the Adult Education State plan. The commenters were concerned that this provision would not allow the States enough flexibility to make necessary changes during the effective period of the State application.

Discussion: The Secretary expects that each year there will be some changes in funding and operating the State literacy resource centers. A State participating in a regional center may decide it is more advantageous to operate its own State center, or a State may wish to join a regional center. It may be necessary for a State or a group of States to change the recipient of a center award. A State that did not participate in the program in the prior year may decide to apply for a grant.

The Secretary, as stated above, intends to give the States as much flexibility as possible in designing and operating these resource centers, and will allow States to make necessary changes on an annual basis. On the other hand, if no change is needed in a State or regional center in a particular year, the Secretary will not require a new application or an amendment. This would be unnecessary paperwork.

Changes: A new paragraph (f) has been added to § 464.10. Through a notice published in the **Federal Register**, the Secretary will give States an annual opportunity to submit new applications or make changes in their existing applications.

Section 464.20 What payment does the Secretary make?

Comments: A commenter stated that the regulations should contain the Department's process for reviewing State applications, including the selection criteria that would be used. Another commenter recommended that the process be simple and streamlined.

Discussion: Since this is a State-administered, formula grant program, the Secretary does not establish or use selection criteria as he would for a competitive grant program. The Secretary approves all State applications that meet the requirements of the Act and the regulations, including the statutory application content requirements repeated in § 464.11.

Note: Other application requirements are contained in 34 CFR part 76, subpart B.

Changes: None.

Section 464.21 May the Secretary Require a State to Participate in a Regional Center?

Comments: A commenter stated that the regulations should contain criteria that the Secretary would use in deciding how a State would be assigned to a regional center. The commenter suggested the use of such factors as geographical boundaries and common statewide literacy needs. A second commenter stated that the regulations should contain criteria that the Secretary would use to allow funding of a State center rather than a regional center. Two commenters asked that the Secretary allow expansion of an existing State literacy resource center, even if total funding for the center were less than the statutory threshold of $100,000.

Discussion: With one exception, the Secretary is given broad discretion to decide whether a State whose allocation is less than $100,000 should be part of a regional center. The exception is stated in § 464.21(b), which provides that the Secretary may not exercise this discretion if the State shows in its application that the total amount of Federal, State, local, and private funds expended to carry out the purposes of this part would equal or exceed $100,000.

The Secretary intends to exercise his discretion in two ways. First, the Secretary will allow a State to use its allocation to expand an existing center, that otherwise meets the purposes of the Act and the requirements of the regulations, even if the total amount devoted to the center is less than $100,000.

Second, if a State is not proposing to expand an existing center, the State may demonstrate in its application either (1) that the State should not be designated to a regional center even though funding for its new State center would be less than $100,000, or (2) that the State should be designated to a particular regional center.

States should be given as much latitude as possible, subject to the requirements of the Act, to design the best possible means of establishing or expanding centers within their jurisdictions. It is unlikely that any Federal criteria would be useful in resolving the many different situations that may arise in establishing and operating the resource centers.

Changes: This section has been amended to provide that States wishing to expand existing centers will not be required by the Secretary to participate in a regional center.

Section 464.30 With whom must a State contract?

In the NPRM, the Secretary noted that the Act specifically provides that a competitive contract must be awarded by a State to establish a State center, but does not reference regional centers as being subject to this requirement. The proposed regulations reiterated the statutory provision. However, the Secretary offered to consider the following options for inclusion in the final regulations, or others suggested in comments received by the public:

(1) Apply the same rules to a regional center that apply to a State center. Require that the group of States that are establishing a regional center designate one State to award a competitive contract for the regional center;

(2) Provide in the regulations that the method for establishing a regional center must be agreed to by the States involved, leaving the method to their discretion; or

(3) Leave the regulations silent on this question.

Comments: Nearly all of the commenters who responded to this issue favored the second option. One commenter stated that the second option would allow States flexibility to build on existing relationships and institutions. The one commenter who opposed giving States full discretion in establishing a regional center stated that the States should be required to use an open and competitive process in selecting a resource center.

In addition to the comments received concerning regional centers, several commenters asked that competition not be required to expand an existing State literacy resource center.

Two commenters asked for "field involvement" in the State's application review process. These commenters also asked that the regulations include a description of the review process. Some commenters also asked that the regulations include the selection criteria to be used by the States.

Discussion: As stated above, the Secretary intends that States have as much flexibility as possible in establishing and operating the centers. The Secretary has therefore adopted the option recommended by all but one of the commenters for establishing a regional center.

The Secretary has also determined from the comments received that a competitive contract would not be an effective means, at least in some States, of expanding an existing State center. As noted above, States should be given as much flexibility as possible in carrying out the purposes of the Act. Moreover, in section 356(h)(1) of the Act, Congress specified that a State's application must describe how it will develop a new literacy resource center or expand an existing center. Because Congress contemplated that a State would make this choice before it received an award of funds, and because it would be impracticable subsequently to conduct a competition that would undermine that choice—for example, by awarding the funds for expansion to an entity other than the entity that continues to operate the existing center—the Secretary interprets the Act as only requiring a competitive contract if a new State center is being established. Under this interpretation, a State would still be permitted to conduct a competition to expand an existing center if this were appropriate in its particular circumstances.

The State Literacy Resource Centers Program is State-administered, pursuant to the provisions of the Act. In a State-administered program, the Secretary gives the States as much flexibility as possible in deciding how to carry out the purposes established by Congress. If a State establishes a State literacy resource center through a competitive contract, the Education Department General Administrative Regulations provide that the State shall follow its own procedures for those contracts. Beyond this provision, it would not be appropriate for the Federal regulations to dictate how the State conducts its review process.

Changes: The Secretary has revised § 464.30 and added a new § 464.32.

Section 464.31 Who may not Review a Proposal for a Contract?

The Act prohibits a party applying for a contract under this program from reviewing its own proposal. To avoid conflicts of interest, the NPRM proposal also to prohibit the party from reviewing the proposals of the parties with whom it is competing for the contract.

Comments: One commenter objected to the proposed prohibition in the NPRM. The commenter stated that State advisory council members could be applying for the State literacy center contract, and that the regulation could eliminate them from reviewing proposals. The commenter stated that a wide range of literary expertise should be encouraged in the review of proposals.

Discussion: The Secretary believes that it is essential, in a competition for funds, to avoid both actual and potential conflicts of interest. Moreover, the Secretary does not believe that any State has such a lack of persons with expertise in the field of literacy that an exception is needed.

Changes: None.

Part 473—National Workforce Literacy Strategies Program

Section 473.2 Who is Eligible for an Award?

Comment: Two commenters stated that partnerships between private sector and educational organizations should not be required, and that unions and employers having the resources should be permitted to establish programs without the participation of an education partner.

Discussion: The National Workforce Literacy Strategies Program is subject to the same statutory provisions that govern partnerships in the National Workplace Literacy Program. The statute requires applications receiving funding to be submitted jointly by organizations of a specific character. Partnerships must include at least one business, industry, labor organization, or private industry council; and at least one State educational agency, local educational agency, institution of higher education, or school (including an area vocational school, an employment and training agency, or a community-based organization). Therefore, a union and an employer cannot receive funding from either program without incorporating an education partner in the proposed project.

Changes: None.

Comment: Some commenters asked the Secretary to ensure full participation of labor organizations. Two commenters asked the Secretary to require partnerships to include in their partnership agreements, or to obtain prior to expending project funds, the written concurrence of the appropriate labor organizations. The commenters stated that where workers are not organized, concurrence of committees elected by secret ballot of workers to be served should be required.

Discussion: Labor organizations are identified in the Act as eligible partners in both the National Workplace Literacy and National Workforce Literacy Strategies Programs. Like other partners, labor organizations wishing to participate in projects are required to sign a partnership agreement. It is unnecessary to require a partnership having no labor organization partners to obtain the written concurrence of labor organizations regarding its proposed activities. For all projects, the extent to which employees are involved in designing and implementing the project and evaluating its outcomes is one criterion used to determine the relative merits of applications to be funded. (See § 473.21(a)(4).)

Changes: None.

Section 473.4 What Priorities Does the Secretary Establish?

Comments: A commenter stated that the use of priorities other than the small business priority unduly targets the program. The commenter believed that the only other considerations should be the quality of design and the degree to which an application demonstrates the importance of the project to workforce literacy.

Another commenter stated that program priorities and selection criteria should target awards to employers committed to high performance work organizations, worker empowerment, and ongoing worker training. The commenter stated that program evaluations should examine whether an employer's participation in this program affects its training practices or workforce organization.

Discussion: The priorities stated in § 473.4(d) further the purposes of the statute by allowing a focus on critical areas that may need additional attention. Quality of design, and the degree to which an application demonstrates the importance of a project to workforce literacy, are contained in the selection criteria used to determine the relative merits of applications. (See § 473.21.)

The priorities as written do not preclude the submission of an application focussing on the areas of interest mentioned by the second commenter. However, the Secretary does not believe that a focus on these areas of interest would be appropriate in all applications.

Changes: None.

Section 473.6 What Definitions Apply?

Comments: Two commenters stated that references to cross-cultural differences in communication patterns and styles should be included in the definitions of interpersonal skill-building and communication skill-building.

As noted above under § 460.4, another commenter recommended that "problem solving" should include abilities in synthesis, as well as mathematics, analysis, sequencing, and decisionmaking.

Discussion: Cross-cultural training, including training in differences in communication patterns and styles that relate to work environments, is an allowable program cost under the definition of "interpersonal skill-building" contained in this section.

The Secretary concurs with the comment that problem solving, within the context of this program, should include abilities in synthesis.

Changes: The Secretary has revised the definition of "problem solving" and made other technical improvements in this section.

Section 473.10 Are Preapplications Required?

Section 473.11 How Does the Secretary Consider a Preapplication?

Comments: A commenter stated that the Secretary should not include a preapplication process in the regulations. The commenter did not believe that such a process is needed and questioned whether the provision was authorized under the Act.

Discussion: The Secretary has determined that it is unnecessary to include a preapplication process, which was intended to be optional in any case.

Changes: Proposed §§ 473.10 and 473.11 have been deleted from the final regulations.

Section 473.21 What Selection Criteria Does the Secretary Use?

Comments: The Secretary received the following comments on this section:

(1) Additional emphasis in the rating process should be placed on the partnerships' ability to continue the program after federal funding has ended.

(2) Specific qualifications for the project administrator and instructor in funded projects should be developed and included in the selection criteria. The selection criteria should include a plan to consult with advisors from existing federally funded workplace literacy projects.

(3) Applicants should be required to obtain a cooperative review document demonstrating that the State educational agency has reviewed and concurs in the application.

Discussion: One of the selection criteria that the Secretary uses to determine which applications are funded already addresses the question of continuing support for the program. (See § 473.21(a)(7).) The Secretary believes that this criterion provides sufficient emphasis.

The criteria contained in § 473.21(f) are sufficiently specific regarding the qualifications sought in key staff of projects funded by the National Workforce Literacy Strategies Program. Any additional specificity would unduly restrict applicants in the information they provide and could result in an unnecessary paperwork burden.

Applicants are free to consult with staff of existing federally funded workplace literacy projects. However, the Secretary does not believe it appropriate to require this. Such a requirement could impose an unanticipated burden on funded projects.

Applicants may consult with and obtain the views of the State educational agency. However, the Act does not require that the State educational agency review an application before it is submitted to the Secretary, and the Secretary does not see the need to require such an approval process in the absence of a statutory requirement to do so.

Changes: None.

Part 489—Functional Literacy for State and Local Prisoners Program

Part 490—Life Skills for State and Local Prisoners Program

Section 489.2 Who is Eligible for a Grant?

Section 490.2 Who is Eligible for a Grant?

Comments: Several commenters asked for clarification of the statutory categories of eligible parties in §§ 489.2 and 490.2. One commenter stated that local educational agencies (LEAs) should be included since in many places LEAs provide adult education services to State and local prisoners. One commenter expressed concern that private, for-profit entities that contract with State and local governments to manage correctional institutions seemed to be excluded. One commenter recommended that the definition of "State correctional education agency" include the State educational agency responsible for administering adult education funds corrections education.

Discussion: The Secretary agrees that clarification of the statutory terms would be useful. Because the statute refers to "State" and "local" agencies, the Secretary believes that Congress intended eligibility to be restricted to governmental agencies, which would include State and local educational

agencies. However, recipients under this program can still contract with other entities to provide goods or services.

Changes: Sections 489.5 and 490.4 have been amended to add definitions of the entities set forth in §§ 489.2 and 490.2.

Section 489.21 What Selection Criteria Does the Secretary Use?

Section 490.21 What Selection Criteria Does the Secretary Use?

Comments: One commenter stated that the selection criteria for the two programs should give significant weight to an applicant's readiness and past record in incorporating the State's indicators of program quality. Two commenters questioned the suggested use of a random assignment evaluation design. One commenter suggested that the procedure would be difficult and expensive. The other commenter stated that corrections agencies are subject to legal requirements of fairness in providing access to programs, and thought that random assignment would therefore present a problem.

Discussion: The States' indicators of program quality have not yet been developed. After the indicators have been developed, the Secretary will determine whether any amendments to the regulations would be appropriate.

Under the Functional Literacy for State and Local Prisoners Program, all prisoners who are not functionally literate (with some exceptions) must participate in a funded project. Therefore, a random assignment design could be used only if two or more educational approaches are being used in the project. The Life Skills for State and Local Prisoners Program does not include a similar requirement, and random assignment therefore may be more feasible.

Use of a random assignment design is not necessarily more costly than establishing matched comparison groups, another alternative. However, it is important that the evaluator be familiar with the approach. In any case, the regulations leave the approach as optional.

Changes: None.

Other Changes

Comments: The Secretary received some useful suggestions for improving the clarity of the proposed regulations. In response to those suggestions, the following changes have been made.

Changes: Section 464.20(a) has been revised to make clear that, in applying the State basic grant program formula under this section, the Secretary considers only the States that have approved applications under the State Literacy Resource Centers Program. This is necessary to ensure that all funds are allocated under this program even if one or more States do not participate in a particular year.

Section 461.33(a) and (b) have been revised to clarify how the 15 percent set-aside for special experimental demonstration projects and teacher training projects is to be allocated among the purposes in this section. The Secretary interprets the Act to require that only 10 percent of a State's basic grant must be used for (1) training persons engaged, or preparing to engage, as personnel in programs designed to carry out the purposes of the Act, and (2) training professional teachers, volunteers, and administrators. The proposed regulations could have been read to require that two-thirds of all expenditures for special experimental demonstration projects and teacher training projects must be spent for these two purposes, even if the State chooses to spend more than the statutory 15 percent minimum for these projects. The Secretary believes that this interpretation is the better reading of the statutory requirement that "⅔ of the 15 percent" reserved for these projects be spent for the two designated purposes. (See section 353(b) of the Act.) This leaves a minimum of five percent of the State's grant that must be spent either for the purposes set forth in § 461.33(a)(1) or for the purposes set forth in § 461.33(a)(2), or both.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Intergovernmental Review

These programs are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for these programs.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 425

Adult education, General provisions, Reporting and recordkeeping requirements.

34 CFR Part 426

Adult education, State-administered grants, Corrections education, Literacy, Reporting and recordkeeping requirements.

34 CFR Part 431

Adult education, Reporting and recordkeeping requirements.

34 CFR Part 432

Adult education, Workplace literacy, Reporting and recordkeeping requirements.

34 CFR Part 433

Adult education, Workplace literacy, Reporting and recordkeeping requirements.

34 CFR Part 434

Adult education, English literacy, Reporting and recordkeeping requirements.

34 CFR Part 435

Adult education, English literacy, Reporting and recordkeeping requirements.

34 CFR Part 436

Adult education, Migrant farmworker, Immigrant education, Reporting and recordkeeping requirements.

34 CFR Part 437

Adult education, Adult literacy, Volunteers, Reporting and recordkeeping requirements.

34 CFR Part 438

Adult education, Policy studies, Reporting and recordkeeping requirements.

34 CFR Part 441

Adult education, Homeless program, Reporting and recordkeeping requirements.

34 CFR Part 460

Adult education, General provisions, Reporting and recordkeeping requirements.

34 CFR Part 461

Adult education, State-administered grants, Corrections education, Literacy, Reporting and recordkeeping requirements.

34 CFR Part 462

Adult education, Workplace literacy, Technology, Reporting and recordkeeping requirements.

34 CFR Part 463

Adult education, English literacy, Reporting and recordkeeping requirements.

34 CFR Part 464

Adult education, Literacy, Resource centers, Reporting and recordkeeping requirements.

34 CFR Part 471

Adult education, Reporting and recordkeeping requirements.

34 CFR Part 472

Adult education, Workplace literacy, Reporting and recordkeeping requirements.

34 CFR Part 473

Adult education, Workplace literacy, Technology, Reporting and recordkeeping requirements.

34 CFR Part 474

Adult education, English literacy, Reporting and recordkeeping requirements.

34 CFR Part 475

Adult education, Migrant farmworker, Immigrant education, Reporting and recordkeeping requirements.

34 CFR Part 476

Adult education, Adult literacy, Volunteers, Reporting and recordkeeping requirements.

34 CFR Part 477

Adult education, Policy studies, Reporting and recordkeeping requirements.

34 CFR Part 489

Adult education, Prisoners, Literacy, Reporting and recordkeeping requirements.

34 CFR Part 490

Adult education, Prisoners, Literacy, Skills, Reporting and recordkeeping requirements.

34 CFR Part 491

Adult education, Homeless program, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Numbers: 84.002 Adult Education State-Administered Basic Grant Program; 84.223 State-Administered English Literacy Program; 84.191 National Adult Education Discretionary Program; 84.198 National Workplace Literacy Program; 84.192 Adult Education for the Homeless Program. The following programs have not been assigned CFDA numbers: State-Administered Workplace Literacy Program, State Literacy Resource Centers Program, National Workforce Literacy Strategies Program, Adult Migrant Farmworker and Immigrant Education Program, National Adult Literacy Volunteer Training Program, State Program Analysis Assistance and Policy Studies Program, Functional Literacy for State and Local Prisoners Program, Life Skills for State and Local Prisoners Program.)

Dated: May 26, 1992.

Lamar Alexander,

Secretary of Education.

The Secretary amends chapter IV of title 34 of the Code of Federal Regulations as follows:

1. Parts 425, 426, 431, 432, 433, 434, 435, 436, 437, 438, and 441 are redesignated in accordance with the following distribution table:

REDESIGNATION

Old part	Title	New part
425	Adult Education—General Provisions.	460
426	Adult Education State-Administered Basic Grant Program.	461
433	State-Administered Workplace Literacy Program.	462
434	State-Administered English Literacy Program.	463
431	National Adult Education Discretionary Program.	471
432	National Workplace Literacy Program.	472
435	National English Literacy Demonstration Program for Individuals of Limited English Proficiency.	474
436	Adult Migrant Farmworker and Immigrant Education Program.	475
437	National Adult Literacy Volunteer Training Program.	476
438	State Program Analysis Assistance and Policy Studies Program.	477
441	Adult Education For The Homeless Program.	491

PART 460—ADULT EDUCATION—GENERAL PROVISIONS

2. The authority citation for part 460 continues to read as follows:

Authority: 20 U.S.C. 1201 *et seq.*, unless otherwise noted.

3. Section 460.2 is amended by redesignating paragraph (b) as paragraph (e), paragraphs (c) and (d) as paragraphs (b) and (c), respectively, and paragraphs (e) through (h) as paragraphs (g) through (j), respectively, and by adding new paragraphs (d), (f), (k), and (l), to read as follows:

§ 460.2 What programs are authorized by the Adult Education Act?

* * * * *

(d) State Literacy Resource Centers Program (34 CFR part 464).

* * * * *

(f) National Workforce Literacy Strategies Program (34 CFR part 473).

* * * * *

(k) Functional Literacy for State and Local Prisoners Program (34 CFR part 489).

(l) Life Skills for State and Local Prisoners Program (34 CFR part 490).

* * * * *

4. Section 460.3 is revised to read as follows:

§ 460.3 What regulations apply to the adult education programs?

The following regulations apply to the adult education programs:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR part 75 (Direct Grant Programs) applies to parts 472, 473, 474, 475, 476, 477, 489, and 490, except that 34 CFR 75.720(b), regarding the frequency of certain reports, does not apply.

(3) 34 CFR part 76 (State-Administered Programs) applies to parts 461, 462, 463, and 464, except that 34 CFR 76.101 (The general State application) does not apply.

(4) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(5) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(6) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(7) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(8) 34 CFR part 82 (New Restrictions on Lobbying).

(9) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(10) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 460.

(c) The regulations in 34 CFR parts 461, 462, 463, 464, 472, 473, 474, 475, 476, 477, 489, and 490.

(Authority: 20 U.S.C. 1201 *et seq.*)

5. Section 460.4 is amended by adding, in alphabetical order in paragraph (a), the term "State", by removing the definitions of "expansion" and "State" in paragraph (c), and by adding, in alphabetical order in paragraph (c), definitions of the terms "Governor" and "literacy", to read as follows:

§ 460.4 What definitions apply to the adult education programs?

* * * * *

(c) * * *

Governor includes the chief executive officer of a State that does not have a Governor.

* * * * *

Literacy means an individual's ability to read, write, and speak in English, compute, and solve problems, at levels of proficiency necessary to function on the job and in society, to achieve one's goals, and to develop one's knowledge and potential.

* * * * *

6. Part 461 is revised to read as follows:

PART 461—ADULT EDUCATION STATE-ADMINISTERED BASIC GRANT PROGRAM

Subpart A—General

Sec.

Subpart B—How Does a State Apply for a Grant?

Subpart C—How Does the Secretary Make a Grant to a State?

Subpart D—How Does a State Make an Award to an Eligible Recipient?

Subpart E—What Conditions Must Be Met by a State?

Subpart F—What Are the Administrative Responsibilities of a State?

Authority: 20 U.S.C. 1201 *et seq.*, unless otherwise noted.

Subpart A—General

§ 461.1 What is the Adult Education State-administered Basic Grant Program?

The Adult Education State-administered basic Grant Program (the program) is a cooperative effort between the Federal Government and the States to provide adult education. Federal funds are granted to the States on a formula basis. Based on need and resources available, States fund local programs of adult basic education, programs of adult secondary education, and programs for adults with limited English proficiency.

(Authority: 20 U.S.C. 1203)

§ 461.2 Who is eligible for an award?

State educational agencies (SEAs) are eligible for awards under this part.

(Authority: 20 U.S.C. 1203)

§ 461.3 What are the general responsibilities of the State educational agency?

(a) A State that desires to participate in the program shall designate the SEA as the sole State agency responsible for the administration and supervision of the program under this part.

(b) The SEA has the following general responsibilities:

(1) Development, submission, and implementation of the State application and plan, and any amendments to these documents.

(2) Evaluation of activities, as described in section 352 of the Act and § 461.46.

(3) Consultation with the State advisory council, if a State advisory council has been established under section 332 of the Act and § 461.50.

(4) Consultation with other appropriate agencies, groups, and individuals involved in the planning, administration, evaluation, and coordination of programs funded under the Act.

(5)(i) Assignment of personnel as may be necessary for State administration of programs under the Act.

(ii) The SEA must ensure that—(A) These personnel are sufficiently qualified by education and experience; and

(B) There is a sufficient number of these personnel to carry out the responsibilities of the State.

(6) If the State imposes any rule or policy relating to the administration and operation of programs under the Act (including any rule or policy based on State interpretation of any Federal law, regulation, or guidance), the SEA shall identify the rule or policy as a State-imposed requirement.

(7) By July 25, 1993, development and implementation, in consultation with a widely representative group of appropriate experts, educators, and administrators, of indicators of program quality to be used to evaluate programs assisted under this part, as required by section 352 of the Act and § 461.46, to determine whether those programs are effective, including whether those programs are successfully recruiting, retaining, and improving the literacy skills of the individuals served under those programs.

(Authority: 20 U.S.C. 1205 (a) and (b))

§ 461.4 What regulations apply?

The following regulations apply to the program:

(a) The regulations in this part 461

(b) The regulations in 34 CFR part 460.

(Authority: 20 U.S.C. 1201 *et seq.*)

§ 461.5 What definitions apply?

(a) The definitions in 34 CFR 460.4 apply to this part.

(b) For the purposes of this part, "State" includes the Federated States of Micronesia and the Republic of the Marshall Island.

(Authority: 20 U.S.C. 1201 *et seq.*)

Subpart B—How Does a State Apply for a Grant?

§ 461.10 What documents must a State submit to receive a grant?

An SEA shall submit the following to the Secretary as one document:

(a) A State plan, developed once every four years, that meets the requirements of the Act and contains the information required in § 461.12.

(b) A State application consisting of program assurances, signed by an authorized official of the SEA, to provide that—

(1) The SEA will provide such methods of administration as are necessary for the proper and efficient administration of the Act;

(2) Federal funds granted to the State under the Act will be used to supplement, and not supplant, the amount of State and local funds available for uses specified in the Act;

(3) Programs, services, and activities funded in accordance with the uses specified in section 322 of the Act are designed to expand or improve the quality of adult education programs, including programs for educationally disadvantaged adults, to initiate new programs of high quality, or, if necessary, to maintain programs;

(4) The SEA will provide such fiscal control and fund accounting procedures as may be necessary to ensure proper disbursement of, and accounting for, Federal funds paid to the State (including Federal funds paid by the State to eligible recipients under the Act);

(5) The SEA has instituted policies and procedures to ensure that copies of the State plan and all statements of general policy, rules, regulations, and procedures will be made available to the public;

(6) The SEA will comply with the maintenance of effort requirements in section 361(b) of the Act;

Cross-Reference: See § 461.42 What is the maintenance of effort requirement?

(7) Adults enrolled in adult basic education programs, including programs for adults with limited English proficiency, will not be charged tuition, fees, or any other charges, or be required to purchase any books or any other materials that are needed for participation in the program;

(8) The SEA may use not more than 20 percent of the funds granted to the State under the Act for programs of equivalency for a certificate of graduation from secondary school;

(9) As may be required by the Secretary, the SEA will report information concerning special experimental demonstration projects and teacher training projects supported under section 353 of the Act; and

(10) The SEA annually will report information abut the State's adult education students, programs, expenditures, and goals, as may be required by the Secretary. (Approved by the Office of Management and Budget under control number 1830–0026.)

(Authority: 20 U.S.C. 1203a(b)(2), 1206(a), 1206b, 1207a, 1208, and 1209(b))

§ 461.11 How is the State plan developed?

In formulating the State plan, the SEA shall—

(a) Meet with and utilize the State advisory council, if a council is established under section 332 of the Act and § 461.50;

(b) After providing appropriate and sufficient notice to the public, conduct at least two public hearings in the State for the purpose of affording all segments of the public, including groups serving educationally disadvantaged adults, and interested organizations and groups, an opportunity to present their views and make recommendations regarding the State plan;

(c) Make a thorough assessment of —

(1) The needs of adults, including educationally disadvantaged adults, eligible to be served as well as adults proposed to be served and those currently served by the program; and

(2) The capability of existing programs and institutions to meet those needs; and

(d) State the changes and improvements required in adult education to fulfill the purposes of the Act and the options for implementing these changes and improvements. (Approved by the Office of Management and Budget under control number 1830–0026.)

(Authority: 20 U.S.C. 1206a(a)(1) and (2), (b))

§ 461.12 What must the State plan contain?

(a) Consistent with the assessment described in § 461.11(c), a State plan must, for the four-year period covered by the plan—

(1) Describe the adult education needs of all segments of the adult population in the State identified in the assessment, including the needs of those adults who are educationally disadvantaged;

(2) Describe and provide for the fulfillment of the literacy needs of individuals in the State;

(3) Set forth measurable goals for improving literacy levels, retention in literacy programs, and long-term learning gains of individuals in the State and describe a comprehensive approach for achieving those goals, including the development of indicators of program quality as required by section 331(a)(2) of the Act and § 461.3(b)(7).

(4) Describe the curriculum, equipment, and instruments that are being used by instructional personnel in programs and indicate how current these elements are;

(5) Describe the means by which the delivery of adult education services will be significantly expanded (including efforts to reach typically underserved groups such as educationally disadvantaged adults, individuals of limited English proficiency, and adults with disabilities) through coordination by agencies, institutions, and organizations including the public school system, businesses, labor unions, libraries, institutions of higher education, public health authorities, employment or training programs, antipoverty programs, organizations providing assistance to the homeless, and community and voluntary organizations;

(6) Describe the means by which representatives of the public and private sectors were involved in the development of the State plan and how they will continue to be involved in the implementation of the plan, especially in the expansion of the delivery of adult education services by cooperation and collaboration with those public and private agencies, institutions, and organizations;

(7) Describe the capability of existing programs and institutions to meet the needs described in paragraph (a)(1) of this section, including the other Federal and non-Federal resources available to meet those needs;

(8) Describe the outreach activities that the State intends to carry out during the period covered by the plan, including specialized efforts—such as flexible course schedules, auxiliary aids and services, convenient locations, adequate transportation, and child care services—to attract and assist meaningful participation in adult education programs;

(9)(i) Describe the manner in which the SEA will provide for the needs of adults of limited English proficiency or no English proficiency by providing

programs designed to teach English and, as appropriate, to allow these adults to progress effectively through the adult education program or to prepare them to enter the regular program of adult education as quickly as possible.

(ii) These programs may, to the extent necessary, provide instruction in the native language of these adults or may provide instruction exclusively in English.

(iii) These programs must be carried out in coordination with programs assisted under the Bilingual Education Act and with bilingual vocational education programs under the Carl D. Perkins Vocational and Applied Technology Education Act;

(10) Describe how the particular education needs of adult immigrants, the incarcerated, adults with disabilities, the chronically unemployed, homeless adults, the disadvantaged, and minorities in the State will be addressed;

(11)(i) Describe the progress the SEA has made in achieving the goals set forth in each State plan subsequent to the initial State plan filed in 1989; and

(ii) Describe how the assessment of accomplishments and the findings of program reviews and evaluations required by section 352 of the Act and § 461.46 were considered in establishing the State's goals for adult education in the plan being submitted;

(12) Describe the criteria the SEA will use in approving applications by eligible recipients and allocating funds made available under the Act to those recipients;

(13) Describe the methods proposed for joint planning and coordination of programs carried out under the Act with programs conducted under applicable Federal and State programs, including the Carl D. Perkins Vocational and Applied Technology Education Act, the Job Training Partnership Act, the Rehabilitation Act of 1973, the Individuals with Disabilities Education Act, the Immigration Reform and Control Act of 1986, the Higher Education Act of 1965, and the Domestic Volunteer Service Act, to ensure maximum use of funds and to avoid duplication of services;

(14) Describe the steps taken to utilize volunteers, particularly volunteers assigned to the Literacy Corps established under the Domestic Volunteer Service Act and volunteers trained in programs carried out under section 382 of the Act and 34 CFR part 476, but only to the extent that those volunteers supplement and do not supplant salaried employees;

(15) Describe the measures to be taken to ensure that adult education programs, services, and activities under the Act will take into account the findings of program reviews and evaluations required by section 352 of the Act and § 461.46;

Cross-Reference: See § 461.22. What criteria does the Secretary use in approving a State's description of efforts relating to program reviews and evaluation?

(16) Report the amount of administrative funds to be spent on program improvements;

(17) Contain assurances that financial assistance provided under this part is used to assist and expand existing programs and to develop new programs for—

(i) Adults whose lack of basic skills renders them unemployable;

(ii) Adults whose lack of basic skills keeps them, whether employed or unemployed, from functioning independently in society; and

(iii) Adults whose lack of basic skills severely reduces their ability to have a positive effect on the literacy of their children;

(18) Describe the SEA's policies, procedures, and activities for carrying out special experimental demonstration projects and teacher training projects that meet the requirements of § 461.33;

(19) Describe the SEA's policies, procedures, and activities for carrying out corrections education and education for other institutionalized adults that meet the requirements of § 461.32;

(20) Describe the SEA's planned use of Federal funds for administrative costs under § 461.40(a), including any planned expenditures for a State advisory council under § 461.50.

Note: An additional source of funding exists under section 356(g) of the Act and 34 CFR part 464, but need not be reported under this paragraph.

and

(21) Include a summary of recommendations received and the SEA's responses to the recommendations made through the State plan development process required under § 461.11(b).

(b) Each State plan must provide assurance that public or private non-profit entities eligible under § 461.30—local educational agencies, public or private nonprofit agencies, community-based organizations, correctional education agencies, postsecondary educational institutions, institutions that serve educationally disadvantaged adults, and any other institution that has the ability to provide literacy services to adults and families—will be provided direct and equitable access to all Federal funds provided under this part, including—

(1) The right to submit applications directly to the SEA for those funds; and

(2) Use by the SEA of a process for selecting recipients of those funds that gives each agency, institution, and organization a fair chance of receiving an award.

(c) To be eligible to participate in the State-administered Workplace Literacy Program under section 371(b) of the Act, an SEA shall comply with the requirements in 34 CFR 462.10.

(d) To be eligible to participate in the State-administered English Literacy Program under section 372(a) of the Act, an SEA shall comply with the requirements in 34 CFR 463.10.

(e) In order for a State, or the local recipients within the State, to be eligible to apply for funds under the Adult Migrant Farmworker and Immigrant Education Program under section 381 of the Act and 34 CFR part 475, an SEA shall describe the types of projects appropriate for meeting the educational needs of adult migrant farm workers and immigrants under section 381 of the Act.

(Approved by the Office of Management and Budget under control number 1830-0026.)

(Authority: 20 U.S.C. 1203a(a)(1); 1204; 1205(c); 1206a(a)(2), (b)(1)(B), (c), (d); 1208; 1211(b)(3)(A); 1211a(a)(2); and 1213(a))

§ 461.13 What procedures does a State use to submit its State plan?

(a) An SEA shall submit its State plan to the Secretary not later than 90 days prior to the first program year for which the plan is in effect.

(b)(1) Not less than sixty days prior to submitting the State plan to the Secretary, the SEA shall give the State advisory council, if one is established under section 332 of the Act and § 461.50, an opportunity to review and comment on the plan.

(2) The SEA shall respond to all timely and substantive objections of the State advisory council and include with the State plan a copy of those objections and its response.

(c)(1) Not less than sixty days prior to submitting the State plan to the Secretary, the SEA shall give the following entities an opportunity to review and comment on the plan:

(i) The State board or agency for vocational education.

(ii) The State Job Training Coordinating Council under the Job Training Partnership Act.

(iii) The State board or agency for postsecondary education.

(2) Comments (to the extent those comments are received in a timely fashion) of entities listed in paragraph (c)(1) of this section and the SEA's

response must be included with the State plan.

(Approved by the Office of Management and Budget under control number 1830–0026.)

(Authority: 20 U.S.C. 1206(b) and 1206a(a)(3)(A) and (B))

§ 461.14 When are amendments to a State plan required?

(a) *General.* If an amendment to the State plan is necessary, the SEA shall submit the amendment to the Secretary not later than 90 days prior to the program year of operation to which the amendment applies.

(b) *Indicators of program quality.* Each SEA shall amend its plan by July 25, 1993, to include the indicators of program quality required by section 331 of the Act and § 461.3(b)(7). Cross-Reference: See 34 CFR 76.140–76.142 Amendments.

(Approved by the Office of Management and Budget under control number 1830–0026.)

(Authority: 20 U.S.C. 1207(a))

Subpart C—How Does the Secretary Make a Grant to a State?

§ 461.20 How does the Secretary make allotments?

The Secretary determines the amount of each State's grant according to the formula in section 313(b) of the Act.

(Authority: 20 U.S.C. 1201b(b))

§ 461.21 How does the Secretary make reallotments?

(a) Any amount of any State's allotment under section 313(b) of the Act that the Secretary determines is not required, for the period the allotment is available, for carrying out that State's plan, is reallotted to other States on dates that the Secretary may fix.

(b) The Secretary determines any amounts to be reallotted on the basis of—

(1) Reports, filed by the States, of the amounts required to carry out their State plans; and

(2) Other information available to the Secretary.

(c) Reallotments are made to other States in proportion to those State's original allotments for the fiscal year in which allotments originally were made, unless the Secretary reduces a State's proportionate share by the amount the Secretary estimates will exceed the sum the State needs and will be able to use under its plan.

(d) The total of any reductions made under paragraph (c) of this section is reallotted among those States whose proportionate shares were not reduced.

(e)(1) Any amount reallotted to a State during a fiscal year is deemed part of the State's allotment for that fiscal year.

(2) A reallotment of funds from one State to another State does not extend the period of time in which the funds must be obligated.

(Authority: 20 U.S.C. 1201b(c))

§ 461.22 What criteria does the Secretary use in approving a State's description of efforts relating to program reviews and evaluations?

The Secretary considers the following criteria in approving a State's description of efforts relating to program reviews and evaluations under section 342(c)(13) of the Act and § 461.12(a)(15):

(a) The extent to which the State will have effective procedures for using the findings of program reviews and evaluations to identify, on a timely basis, those programs, services, and activities under the Act that are not meeting the educational goals set forth in the State plan and approved applications of eligible recipients.

(b) The adequacy of the State's procedures for effecting timely changes that will enable programs, services, and activities identified under paragraph (a) of this section to meet the educational goals in the State plan and approved applications of eligible recipients.

(c) The extent to which the State will continue to review those programs, activities, and services, and affect further changes as necessary to meet those educational goals.

(Approved by the Office of Management and Budget under control number 1830–0501.)

(Authority: 20 U.S.C. 1206a(c)(13) and 1207a)

§ 461.23 How does the Secretary approve State plans and amendments?

(a) The Secretary approves, within 60 days of receipt, a State plan or amendment that the Secretary determines complies with the applicable provisions of the Act and the regulations in this part.

(b) In approving a State plan or amendment, the Secretary considers any information submitted in accordance with § 461.13 (b) and (c).

(c) The Secretary notifies the SEA, in writing, of the granting or withholding of approval.

(d) The Secretary does not finally disapprove a State plan or amendment without first affording the State reasonable notice and opportunity for a hearing.

(Authority: 20 U.S.C. 1206(b), 1206a(a)(3), and 1207(b))

Subpart D—How Does a State Make an Award to an Eligible Recipient?

§ 461.30 Who is eligible for a subgrant or contract?

(a) The following public or private nonprofit entities are eligible to apply to the SEA for an award:

(1) A local educational agency (LEA).

(2) A public or private nonprofit agency.

(3) A correctional education agency.

(4) A community-based organization.

(5) A postsecondary educational institution.

(6) An institution that serves educationally disadvantaged adults.

(7) Any other institution that has the ability to provide literacy services to adults and families.

(b) A public or private nonprofit entity listed in paragraph (a) of this section may apply on behalf of a consortium that includes a for-profit agency, organization, or institution that can make a significant contribution to attaining the objectives of the Act.

(c)(1) Each State shall also use an amount of funds provided under this part, as determined by the State given the State's needs and resources for adult education, for competitive 2-year grants to public housing authorities for literacy programs and related activities. Any public housing authority that receives a grant under this paragraph shall consult with local adult education providers in conducting programs and activities with assistance provided under the grant. Any grant provided under this paragraph is referred to as a "Gateway Grant."

(2) For the purposes of this part, "public housing authority" means a public housing agency, as defined in 42 U.S.C. 1437a(b)(6), that participates in public housing, as defined in 42 U.S.C. 1437a(b)(1).

(Authority: 20 U.S.C. 1203a(a)(1), (2), (3)(A))

§ 461.31 How does a State award funds?

(a) In selecting local recipients, an SEA shall give preference to those local applicants that have demonstrated or can demonstrate a capability to recruit and serve educationally disadvantaged adults, particularly in areas with a high proportion of adults who do not have a certificate of graduation from a school providing secondary education or its equivalent.

(b) An SEA shall award funds on the basis of applications submitted by eligible recipients.

(c) In reviewing a local application, an SEA shall determine that the application contains the following:

(1) A description of current programs, activities, and services receiving assistance from Federal, State, and local sources that provide adult education in the geographic area proposed to be served by the applicant.

(2) A description of cooperative arrangements (including arrangements with business, industry, and volunteer literacy organizations as appropriate) that have been made to deliver services to adults.

(3) Assurances that the adult educational programs, services, or activities that the applicant proposes to provide are coordinated with and do not duplicate programs, services, or activities made available to adults under other Federal, State, and local programs, including the Job Training Partnership Act, the Carl D. Perkins Vocational and Applied Technology Education Act, the Rehabilitation Act of 1973, the Individuals with Disabilities Education Act, the Indian Education Act, the Higher Education Act of 1965, and the Domestic Volunteer Service Act.

(4) The projected goals of the applicant with respect to participant recruitment, retention, and educational achievement and how the applicant will measure and report progress in meeting its goals.

(5) Any other information the SEA considers necessary.

(d) In determining which programs receive assistance, the SEA shall consider—

(1) The past effectiveness of applicants in providing services (especially with respect to recruitment and retention of educationally disadvantaged adults and the learning gains demonstrated by those adults);

(2) The degree to which the applicant will coordinate and utilize other literacy and social services available in the community; and

(3) The commitment of the applicant to serve individuals in the community who are most in need of literacy services.

(e) In reviewing a local application, an SEA may consider the extent to which the application—

(1) Identifies the needs of the population proposed to be served by the applicant;

(2) Proposes activities that are designed to reach educationally disadvantaged adults;

(3) Describes a project that gives special emphasis to adult basic education;

(4) Describes adequate outreach activities, such as—

(i) Flexible schedules to accommodate the greatest number of adults who are educationally disadvantaged;

(ii) Location of facilities offering programs that are convenient to large concentrations of the adult populations identified by the State in its four-year State plan or how the locations of facilities will be convenient to public transportation; and

(iii) The availability of day care and transportation services to participants in the project;

(5) Describes proposed programs, activities, and services that address the identified needs;

(6) Describes the resources available to the applicant—other than Federal and State adult education funds—to meet those needs (for example, funds provided under the Job Training Partnership Act, the Carl D. Perkins Vocational and Applied Technology Education Act, the Rehabilitation Act of 1973, the Individuals with Disabilities Education Act, the Indian Education Act, the Higher Education Act of 1965, or the Domestic Volunteer Service Act, and local cash or in-kind contributions); and

(7) Describes project objectives that can be accomplished within the amount of the applicant's budget request.

(f) An SEA may not approve an application for a consortium that includes a for-profit agency, organization or institution unless the State has first determined that—

(1) The for-profit entity can make a significant contribution to attaining the objectives of the Act; and

(2) The public or private nonprofit agency, organization, or institution will enter into a contract with the for-profit agency, organization, or institution for the establishment or expansion of programs.

(g) If an SEA awards funds to a consortium that includes a for-profit agency, organization, or institution, the award must be made directly to the public or private nonprofit agency, organization, or institution that applies on behalf of the consortium.

(Approved by the Office of Management and Budget under control number 1830–0501).

(Authority: 20 U.S.C. 1203a(a) and 1206a(c)(4))

§ 461.32 What are programs for corrections education and education for other institutionalized adults?

(a) An SEA shall use not less than 10 percent of its grant for educational programs for criminal offenders in corrections institutions and for other institutionalized adults. Those programs may include—

(1) Academic programs for—(i) Basic education with special emphasis on reading, writing, vocabulary, and arithmetic;

(ii) Special education, as defined by State law;

(iii) Bilingual education or English-as-a-second-language instruction; and

(iv) Secondary school credit;

(2) Vocational training programs;

(3) Library development and library service programs;

(4) Corrections education programs, including training for teacher personnel specializing in corrections education, such as courses in social education, basis skills instruction, and abnormal psychology;

(5) Guidance and counseling programs;

(6) Supportive services for criminal offenders, with special emphasis on the coordination of educational services with agencies furnishing services to criminal offenders after their release; and

(7) Cooperative programs with educational institutions, community-based organizations of demonstrated effectiveness, and the private sector, that are designed to provide education and training.

(b)(1) An SEA shall establish its own statewide criteria and priorities for administering programs for corrections education and education for other institutionalized adults.

(2) The SEA shall determine that an application proposing a project under paragraph (a) of this section contains the information in § 461.31(c) and any other information the SEA considers necessary.

(Authority: 20 U.S.C. 1203a(b)(1) and 1204)

§ 461.33 What are special experimental demonstration projects and teacher training projects?

(a) In accordance with paragraph (b) of this section, an SEA shall use at least 15 percent of its grant for—

(1) Special projects that—(i) Will be carried out in furtherance of the purposes of the Act;

(ii) Will be coordinated with other programs funded under the Act; and

(iii)(A) Involve the use of innovative methods (including methods for educating adults with disabilities, homeless adults, and adults of limited English proficiency), systems, materials, or programs that may have national significance or will be of special value in promoting effective programs under the Act; or

(B) Involve programs of adult education, including education for adults with disabilities, homeless adults, and adults of limited English proficiency, that are part of community school programs, carried out in cooperation with other Federal, State, or local programs that have unusual promise in promoting a comprehensive

or coordinated approach to the problems of adults with educational deficiencies; and

(2)(i) Training persons engaged, or preparing to engage, as personnel in programs designed to carry out the purposes of the Act; and

(ii) Training professional teachers, volunteers, and administrators, with particular emphasis on—

(A) Training— (*1*) Full-time professional adult educators;

(*2*) Minority adult educators; and

(*3*) Educators of adults with limited English proficiency; and

(B) Training teachers to recognize and more effectively serve illiterate individuals with learning disabilities and individuals who have reading ability below the fifth grade level.

(b) An SEA shall use at least—

(1) 10 percent of its grant for the purposes in paragraph (a)(2) of this section; and

(2) Five percent of its grant for the purposes in paragraph (a)(1) or (a)(2) of this section, or both.

(c)(1) An SEA shall establish its own statewide criteria and priorities for providing and administering special experimental demonstration projects and teacher training projects.

(2) The SEA shall determine that an application proposing a project under paragraph (a) of this section contains—

(i) The information in § 461.31(c); and

(ii) Any other information the SEA considers necessary.

(Authority: 20 U.S.C. 1208)

Subpart E—What Conditions Must be Met by a State?

§ 461.40 What are the State and local administrative costs requirements?

(a)(1) Beginning with the fiscal year 1991 grant (a grant that is awarded on or after July 1, 1991 from funds appropriated in the fiscal year 1991 appropriation), an SEA may use no more than 5 percent of its grant or $50,000—whichever is greater—for necessary and reasonable State administrative costs.

(2) For grants awarded from funds appropriated for fiscal years prior to fiscal year 1991 (grants awarded before July 1, 1991), an SEA may determine what percent of its grant is necessary and reasonable for State administrative costs.

(b)(1) At least 95 percent of an eligible recipient's award from the SEA must be expended for adult education instructional activities.

(2) The remainder may be used for local administrative costs—noninstructional expenses, including planning, administration, evaluation, personnel development, and coordination—that are necessary and reasonable.

(3) If the administrative cost limits under paragraph (b)(2) of this section are insufficient for adequate planning, administration, evaluation, personnel development, and coordination of programs supported under the Act, the SEA shall negotiate with local grant recipients in order to determine an adequate level of funds to be used for noninstructional purposes.

(Authority: 20 U.S.C. 1203b and 1205(c))

§ 461.41 What are the cost-sharing requirements?

(a) The Federal share of expenditures made under a State plan for any of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico may not exceed—

(1) 90 percent of the costs of programs carried out with the fiscal year 1988 grant (a grant that is awarded on or after July 1, 1988 from funds appropriated in the fiscal year 1988 appropriation);

(2) 90 percent of the costs of programs carried out with the fiscal year 1989 (a grant that is awarded on or after July 1, 1989 from funds appropriated in the fiscal year 1989 appropriation);

(3) 85 percent of the costs of programs carried out with the fiscal year 1990 grant (a grant that is awarded on or after July 1, 1990 from funds appropriated in the fiscal year 1990 appropriation);

(4) 80 percent of the costs of programs carried out with the fiscal year 1991 grant (a grant that is awarded on or after July 1, 1991 from funds appropriated in the fiscal year 1991 appropriation); and

(5) 75 percent of the costs of programs carried out with the fiscal year 1992 grant (a grant that is awarded on or after July 1, 1992 from funds appropriated in the fiscal year 1992 appropriation) and from each grant thereafter.

(b) The Federal share for American Samoa, Guam, the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, Palau, and the Virgin Islands is 100 percent.

(c) The Secretary determines the non-Federal share of expenditures under the State plan by considering—

(1) Expenditures from State, local, and other non-Federal sources for programs, services, and activities of adult education, as defined in the Act, made by public or private entities that receive from the State Federal funds made available under the Act or State funds for adult education; and

(2) Expenditures made directly by the State for programs, services, and activities of adult education as defined in the Act.

(Authority: 20 U.S.C. 1209(a); 48 U.S.C. 1681)

§ 461.42 What is the maintenance of effort requirement?

(a) *Basic standard.* (1)(i) Except as provided in § 461.43, a State is eligible for a grant from appropriations for any fiscal year only if the Secretary determines that the State has expended for adult education from non-Federal sources during the second preceding fiscal year (or program year) an amount not less than the amount expended during the third preceding fiscal year (or program year).

(ii) The Secretary determines maintenance of effort on a per student expenditure basis or on a total expenditure basis.

(2) For purposes of determining maintenance of effort, the "second preceding fiscal year (or program year)" is the fiscal year (or program year) two years prior to the year of the grant for which the Secretary is determining the State's eligibility. The "third preceding fiscal year (or program year)" is the fiscal year (or program year) three years prior to the year of the grant for which the Secretary is determining the State's eligibility.

Example

Computation based on fiscal year. If a State chooses to use the fiscal year as the basis for its maintenance of effort computations, the Secretary determines whether a State is eligible for the fiscal year 1992 grant (a grant that is awarded on or after July 1, 1992 from funds appropriated in the fiscal year 1992 appropriation) by comparing expenditures from the second preceding fiscal year—fiscal year 1990 (October 1, 1989–September 30, 1990)—with expenditures from the third preceding fiscal year—fiscal year 1989 (October 1, 1988–September 30, 1989). If there has been no decrease in expenditures from fiscal year 1989 to fiscal year 1990, the State has maintained effort and is eligible for its fiscal year 1992 grant.

Computation based on program year. If a State chooses to use a program year running from July 1 to June 30 as the basis for its maintenance of effort computation, the Secretary determines whether a State is eligible for funds for the fiscal year 1992 grant by comparing expenditures from the second preceding program year—program year 1990 (July 1, 1989–June 30, 1990)—with expenditures from the third preceding program year—program year 1989 (July

1, 1988–June 30, 1989). If there has been no decrease in expenditures from program year 1989 to program year 1990, the State has maintained effort and is eligible for its fiscal year 1992 grant.

(b) *Expenditures to be considered.* In determining a State's compliance with the maintenance of effort requirement, the Secretary considers the expenditures described in § 461.41(c).

(Authority: 20 U.S.C. 1209(b))

§ 461.43 Under what circumstances may the Secretary waive the maintenance of effort requirement?

(a) The Secretary may waive, for one year only, the maintenance of effort requirement in § 461.42 if the Secretary determines that a waiver would be equitable due to exceptional or uncontrollable circumstances. These circumstances include, but are not limited to, the following:

(1) A natural disaster.

(2) An unforeseen and precipitous decline in financial resources.

(b) The Secretary does not consider a tax initiative or referendum to be an exceptional or uncontrollable circumstance.

(Authority: 20 U.S.C. 1209(b)(2))

§ 461.44 How does a State request a waiver of the maintenance of effort requirement?

An SEA seeking a waiver of the maintenance of effort requirement in § 461.42 shall—

(a) Submit to the Secretary a request for a waiver; and

(b) Include in the request—(1) The reason for the request; and

(2) Any additional information the Secretary may require.

(Approved by the Office of Management and Budget under control number 1830–0501.)

(Authority: 20 U.S.C. 1209(b)(2))

§ 461.45 How does the Secretary compute maintenance of effort in the event of a waiver?

If a State has been granted a waiver of the maintenance of effort requirement that allows it to receive a grant from appropriations for a fiscal year, the Secretary determines whether the State has meet that requirement for the grant to be awarded for the year after the year of the waiver by comparing the amount spent for adult education from non-Federal sources in the second preceding fiscal year (or program year) with the amount spent in the fourth preceding fiscal year (or program year.)

Example

Because exceptional or uncontrollable circumstances prevented a State from maintaining effort in fiscal year 1990 (October 1, 1989–September 30, 1990) or in program year 1990 (July 1, 1989–June 30, 1990) at the level of fiscal year 1989 (October 1, 1988–September 30, 1989) or program year 1989 (July 1, 1988–June 30, 1989), respectively, the Secretary grants the State a waiver of the maintenance of effort requirement that permits the State to receive its fiscal year 1992 grant (a grant that is awarded on or after July 1, 1992 from funds appropriated in the fiscal year 1992 appropriation). In order to determine whether a State has met the maintenance of effort requirement and therefore is eligible to receive its fiscal year 1993 grant (the grant to be awarded for the year after the year of the waiver), the Secretary compares the State's expenditures from the second preceding fiscal year (or program year—fiscal year 1991 (October 1, 1990–September 30, 1991) or program year 1991 (July 1, 1990–June 30, 1991)—with expenditures from the fourth preceding fiscal year—fiscal year 1989 (October 1, 1988–September 30, 1989) or program year 1989 (July 1, 1988–June 30, 1989). If the expenditures from fiscal year (or program year) 1991 are not less than the expenditures from fiscal year (or program year) 1989, the State has maintained effort and is eligible for its fiscal year 1993 grant.

(Authority: 20 U.S.C. 1209(b)(2))

§ 461.46 What requirements for program reviews and evaluations must be met by a State?

(a) An SEA shall provide for program reviews and evaluations of all State-administered adult education programs, services, and activities it assists under the Act. The SEA shall use its program reviews and evaluations to assist LEAs and other recipients of funds in planning and operating the best possible programs of adult education and to improve the State's programs of adult education.

(b) In reviewing programs, an SEA shall, during the four-year period of the State plan, gather and analyze data—including standardized test data—on the effectiveness of State-administered adult education programs, services, and activities to determine the extent to which—

(1) The State's adult education programs are achieving the goals in the State plan, including the goal of serving educationally disadvantaged adults; and

(2) Grant recipients have improved their capacity to achieve the purposes of the Act.

(c)(1) An SEA shall, each year during the four-year period of the State plan, evaluate in qualitative and quantitative terms the effectiveness of programs, services, and activities conducted by at least 20 percent of the local recipients of funds so that at the end of that period 80 percent of all local recipients have been evaluated once.

(2) An evaluation must consider the following factors:

(i) Projected goals of the recipient as described in its application pursuant to section 322(a)(4) of the Act and § 461.31(c)(4).

(ii) Planning and content of the programs, services, and activities.

(iii) Curriculum, instructional materials, and equipment.

(iv) Adequacy and qualifications of all personnel.

(v) Achievement of the goals set forth in the State plan.

(vi) Extent to which educationally disadvantaged adults are being served.

(vii) Extent to which local recipients of funds have improved their capacity to achieve the purposes of the Act.

(viii) Success of the recipient in meeting the State's indicators of program quality after those indicators are developed as required by section 331(a)(2) of the Act and § 461.3(b)(7).

(ix) Other factors that affect program operations, as determined by the SEA.

(d)(1) Within 90 days of the close of each program year, the SEA shall submit to the Secretary and make public within the State the following:

(i) With respect to local recipients—

(A) The number and percentage of local educational agencies, community-based organizations, volunteer groups, and other organizations that are grant recipients;

(B) The amount of funds provided to local educational agencies, community-based organizations, volunteer groups, and other organizations that are grant recipients; and

(C) The results of the evaluations carried out as required by paragraph (c)(1) of this section in the year preceding the year for which the data are submitted.

(ii) The information required under § 461.10(b)(10).

(iii) A report on the SEA's activities under paragraph (b) of this section.

(iv) A report on the SEA's activities under paragraph (c) of this section.

(2) The reports described in paragraphs (d)(1)(ii) and (iii) of this section must include—

(i) The results of any program reviews and evaluations performed during the program year, and a description of how the SEA used the program reviews and evaluation process to make necessary changes to improve programs; and

(ii) The comments and recommendations of the State advisory

council, if a council has been established under § 461.50.

(e) If an SEA has established a State advisory council, the SEA shall—

(1) Obtain approval of the plan for program reviews and evaluation from the State advisory council; and

(2) Inform the State advisory council of the results of program reviews and evaluations so that the State advisory council may perform its duties under section 332(f)(7) of the Act.

Note to § 461.46: In addition to the Adult Education State-administered Basic Grant Program in this part 461, State-administered adult education programs include the State-administered Workplace Literacy Program (See 34 CFR part 462) and the State-administered English Literacy Program (See 34 CFR part 463).

(Approved by the Office of Management and Budget under control number 1830-0501.)

(Authority: 20 U.S.C. 1205a(f)(7) and 1207a)

Subpart F—What are the Administrative Responsibilities of a State?

§ 461.50 What are a State's responsibilities regarding a State advisory council on adult education and literacy?

(a) A State that receives funds under section 313 of the Act may—

(1) Establish a State advisory council on adult education and literacy; or

(2) Designate an existing body as the State advisory council.

(b) If a State elects to establish or designate a State advisory council on adult education, the following provisions apply:

(1) The State advisory council must comply with §§ 461.51 and 461.52.

(2) Members to the State advisory council must be appointed by, and be responsible to, the Governor. The Governor shall appoint members in accordance with section 332(e) of the Act.

(3) Costs incurred for a State advisory council that are paid for with funds under this part must be counted as part of the allowable State administrative costs under the Act.

(4) The Governor of the State shall determine the amount of funding available to a State advisory council.

(5) A State advisory council's staffing may include professional, technical, and clerical personnel as may be necessary to enable the council to carry out its functions under the Act.

(6) Members of a State advisory council and its staff, while serving on the business of the council, may receive subsistence, travel allowances, and compensation in accordance with State law and regulations and State practices applicable to persons performing comparable duties and services.

(Authority: 20 U.S.C. 1205a(a)(1), (d)(1), (e))

§ 461.51 What are the membership requirements of a State advisory council?

(a)(1) The membership of a State advisory council must be broadly representative of citizens and groups within the State having an interest in adult education and literacy. The council must consist of—

(i) Representatives of public education;

(ii) Representatives of private and public sector employment;

(iii) Representatives of recognized State labor organizations;

(iv) Representatives of private literacy organizations, voluntary literacy organizations, and community-based literacy organizations;

(v) The Governor of a State, or the designee of the Governor;

(vi) Representatives of—

(A) The SEA;

(B) The State job training agency;

(C) The State human services agency;

(D) The State public assistance agency;

(E) The State library program; and

(F) The State economic development agency;

(vii) Officers of the State government whose agencies provide funding for literacy services or who may be designated by the Governor or the Chairperson of the council to serve whenever matters within the jurisdiction of the agency headed by such an officer are to be considered by the council; and

(viii) Classroom teachers who have demonstrated outstanding results in teaching children or adults to read.

(2) The State shall ensure that there is appropriate representation on the State advisory council of—

(i) Urban and rural areas;

(ii) Women;

(iii) Persons with disabilities; and

(iv) Racial and ethnic minorities.

(b)(1) A State shall certify to the Secretary the establishment of, and membership of, its State advisory council.

(2) The certification must be submitted to the Secretary prior to the beginning of any program year in which the State desires to receive a grant under the Act.

(c) Members must be appointed for fixed and staggered terms and may serve until their successors are appointed. Any vacancy in the membership of the council must be filled in the same manner as the original appointment. Any member of the council may be removed for cause in accordance with procedures established by the council.

(Approved by the Office of Management and Budget under control number 1830-0501.)

(Authority: 20 U.S.C. 1205a (a)(1), (b), (c), and (e))

§ 461.52 What are the responsibilities of a State advisory council?

(a) Subject to paragraphs (b) and (c) of this section, the State advisory council shall determine its own procedures, staffing needs (subject to funding levels authorized by the Governor of the State), and the number, time, place, and conduct of meetings.

(b) The State advisory council shall meet at least four times each year. At least one of those meetings must provide an opportunity for the genral public to express views concerning adult education in the State.

(c) One member more than one-half of the members on the council constitute a quorum for the purpose of transmitting recommendations and proposals to the Governor of the State, but a lesser number of members may constitute a quorum for other purposes.

(d) A state advisory council shall—(1) Meet with the State agencies responsible for literacy training during the planning year to advise on the development of a State plan for literacy and for adult education that fulfills the literacy and adult educations needs of the State, especially with respect to the needs of the labor market, economic development goals, and the needs of the individuals in the State;

(2) Advise the Governor, the SEA, and other State agencies concerning—

(i) The development and implementation of measurable State literacy and adult education goals consistent with section 342(c)(2) of the Act, especially with respect to—

(A) Improving levels of literacy in the State by ensuring that all appropriate State agencies have specific objectives and strategies for those goals in a comprehensive approach;

(B) Improving literacy programs in the State; and

(C) Fulfilling the long-term literacy goals of the State;

(ii) The coordination and monitoring of State literacy training programs in order to progress toward the long-term literacy goals of the State;

(iii) The improvement of the quality of literacy programs in the State by supporting the integration of services, staff training, and technology-based learning and the integration of resources of literacy programs conducted by various agencies of State government; and

(iv) Private sector initiatives that would improve adult education

programs and literacy programs, especially through public-private partnerships;

(3) Review and comment on the plan submitted pursuant to section 356(h) of the Act and submit those comments to the Secretary;

(4) Measure progress on meeting the goals and objectives established pursuant to paragraph (d)(2)(i) of this section;

(5) Recommend model systems for implementing and coordinating State literacy programs for replication at the local level;

(6) Develop reporting requirements, standards for outcomes, performance measures, and program effectiveness in State program that are consistent with those proposed by the Federal Interagency Task Force on Literacy; and

(7)(i) Approve the plan for the program reviews and evaluations required in section 352 of the Act and § 461.46 and participate in implementing and disseminating the program reviews and evaluations. In approving the plan for the program reviews and evaluations, the State advisory council shall ensure that persons knowledgeable of the daily operation of adult education programs are involved;

(ii) Advise the Governor, the State legislature, and the general public of the State with respect to the findings of the program reviews and evaluations; and

(iii) Include in any reports of the program reviews and evaluations the council's comments and recommendations.

(Approved by the Office of Management and Budget under control number 1830-0501.)

(Authority: 20 U.S.C. 1205a (d) and (f), 1206a(a)(3)(B))

§ 461.53 May a State establish an advisory body other than a State advisory council?

(a) A State may establish an advisory body that is funded solely from non-Federal sources.

(b) The advisory body described in paragraph (a) of this section is not required to comply with the requirements of section 332 of the Act and this part.

(c) The non-Federal funds used to support the advisory body may not be included in the non-Federal share of expenditures described in § 461.41(c).

(Authority: 20 U.S.C. 1205a and 1209)

PART 462—STATE-ADMINISTERED WORKPLACE LITERACY PROGRAM

7. The authority citation for part 462 continues to read as follows:

Authority: 20 U.S.C. 1211a(b), unless otherwise noted.

8. Section 462.50 is amended by revising paragraph (d) to read as follows:

§ 462.50 What other requirements must be met under this program?

* * * * *

(d) An award under this program may be used to pay—

(1) 100 percent of the administrative costs incurred in establishing a project during the start-up period under paragraph (e) of this section by an SEA, LEA, or other entity described in § 462.30(a), that receives a grant or subgrant under this part; and

(2) 70 percent of the costs of a project after the start-up period.

* * * * *

9. A new part 464 is added to read as follows:

PART 464—STATE LITERACY RESOURCE CENTERS PROGRAM

Subpart A—General

Sec.

Subpart B—How Does a State Apply for a Grant?

Subpart C—How Does the Secretary Make a Grant to a State?

Subpart D—How Does a State Award Contracts?

Subpart E—What Post-Award Conditions Must Be Met by a State?

Authority: 20 U.S.C. 1208aa, unless otherwise noted.

Subpart A—General

§ 464.1 What is the State Literacy Resource Centers Program?

The State Literacy Resource Centers Program assists State and local public and private nonprofit efforts to eliminate illiteracy through a program of State literacy resource center grants to—

(a) Stimulate the coordination of literacy services;

(b) Enhance the capacity of State and local organizations to provide literacy services; and

(c) Serve as a reciprocal link between the National Institute for Literacy and service providers for the purpose of sharing information, data, research, and expertise and literacy resources.

(Authority: 20 U.S.C. 1208aa(a))

§ 464.2 Who is eligible for a grant?

States are eligible to receive grants under this part.

(Authority: 20 U.S.C. 1208aa(c))

§ 464.3 What kinds of activities may be assisted?

(a) The Secretary makes grants under this part for purposes of establishing a network of State or regional adult literacy resource centers.

(b) Each State shall use funds provided under this part to conduct activities to—

(1) Improve and promote the diffusion and adoption of state-of-the-art teaching methods, technologies, and program evaluations;

(2) Develop innovative approaches to the coordination of literacy services within and among States and with the Federal government;

(3) Assist public and private agencies in coordinating the delivery of literacy services;

(4) Encourage government and industry partnerships, including partnerships with small businesses, private nonprofit organizations, and community-based organizations;

(5) Encourage innovation and experimentation in literacy activities that will enhance the delivery of literacy services and address emerging problems;

(6) Provide technical and policy assistance to State and local governments and service providers to improve literacy policy and programs and access to those programs;

(7) Provide training and technical assistance to literacy instructors in reading instruction and in—

(i) Selecting and making the most effective use of state-of-the-art

methodologies, instructional materials, and technologies such as—

(A) Computer-assisted instruction;

(B) Video tapes;

(C) Interactive systems; and

(D) Data link systems; or

(ii) Assessing learning style, screening for learning disabilities, and providing individualized remedial reading instruction; or

(8) Encourage and facilitate the training of full-time professional adult educators.

(Authority: 20 U.S.C. 1208aa(b), (d))

§ 464.4 What regulations apply?

The following regulations apply to the State Literacy Resource Centers Program:

(a) The regulations in this part 464.

(b) The regulations in 34 CFR part 460.

(Authority: 20 U.S.C. 1208aa)

§ 464.5 What definitions apply?

The definitions in 34 CFR part 460 apply to this part.

(Authority: 20 U.S.C. 1208aa)

Subpart B—How Does a State Apply for a Grant?

§ 464.10 How do States apply?

(a) The Governor of a State may submit an application to the Secretary for a grant for a State adult literacy resource center.

(b) The Governors of a group of States may submit an application to the Secretary for a grant for a regional adult literacy resource center.

(c) A State may apply for and receive both a grant for a State adult literacy resource center and, as part of a group of States, a grant for a regional adult literacy resource center.

(d) If appropriate, a State shall obtain the review and comments of the State council on the application.

(e) An approved application remains in effect during the period of the State plan under 34 CFR part 461.

(f) Through a notice published in the Federal Register, the Secretary sets an annual deadline before which a State may submit a new application or an amendment to its existing application.

(Authority: 20 U.S.C. 1208aa(h))

§ 464.11 What must an application contain?

An application must describe how the State or group of States will—

(a) Develop a literacy resource center or expand an existing literacy resource center;

(b) Provide services and activities with the assistance provided under this part;

(c) Ensure access to services of the center for the maximum participation of all public and private programs and organizations providing or seeking to provide basic skills instruction, including local educational agencies, agencies responsible for corrections education, service delivery areas under the Job Training Partnership Act, welfare agencies, labor organizations, businesses, volunteer groups, and community-based organizations;

(d) Address the measurable goals for improving literacy levels as set forth in the plan submitted under section 342 of the Act; and

(e) Develop procedures for the coordination of literacy activities for statewide and local literacy efforts conducted by public and private organizations, and for enhancing the systems of service delivery.

(Approved by the Office of Management and Budget under control number 1830-0501)

(Authority: 20 U.S.C. 1208aa(h))

§ 464.12 How may States agree to develop a regional center?

A group of States may enter into an interstate agreement to develop and operate a regional adult literacy resource center for purposes of receiving assistance under this part if the States determine that a regional approach is more appropriate for their situation.

(Authority: 20 U.S.C. 1208aa(j)(1))

Subpart C—How Does the Secretary Make a Grant to a State?

§ 464.20 What payment does the Secretary make?

(a)(1) From sums available for purposes of making grants under this part for any fiscal year, the Secretary allots to each State, that has an application approved under §§ 464.10–464.11, an amount that bears the same ratio to those sums as the amount allotted to the State under section 313(b) of the Act for the purpose of making grants under section 321 of the Act bears to the aggregate amount allotted to all States under that section for that purpose.

(2) In applying the formula in section 313(b) of the Act to calculate grants under this part, the Secretary counts the number of adults only in States that have approved applications under this part.

(b)(1) The Secretary pays to each State the Federal share of the cost of activities described in the application.

(2) For purposes of this section, the Federal share—

(i) For each of the first two fiscal years in which the State receives funds under this part, may not exceed 80 percent;

(ii) For each of the third and fourth fiscal years in which the State receives funds under this part, may not exceed 70 percent; and

(iii) For the fifth and each succeeding year in which the State receives funds under this part, may not exceed 60 percent.

(3) If a State receives funds under this part for participation in a regional center, the State is required to provide only 50 percent of the non-Federal share under paragraph (b)(2) of this section.

(4) The non-Federal share of payments under this section may, in accordance with 34 CFR 80.24, be in cash or in kind, fairly evaluated, including plant, equipment, or services.

(Authority: 20 U.S.C. 1208aa(c)(1), (i), (j)(2))

§ 464.21 May the Secretary require a State to participate in a regional center?

(a) If, in any fiscal year, a State's allotment under this part is less than $100,000, the Secretary may designate that State to receive the funds only as part of a regional center.

(b) Paragraph (a) of this section does not apply to a State—

(1) That demonstrates, in its application to the Secretary, that the total amount of Federal, State, local, and private funds expended to carry out the purposes of this part would equal or exceed $100,000; or

(2) That will use its funds to expand an existing State literacy resource center that meets the purposes of the Act and the requirements in this part.

(Authority: 20 U.S.C. 1208aa(j)(3), (4))

§ 464.22 May a State participating in a regional center use part of its allotment for a State center?

In any fiscal year in which § 464.20(b)(3) applies, the Secretary may allow certain States that receive funds as part of a regional center to reserve a portion of those funds for a State adult literacy resource center under this part.

(Authority: 20 U.S.C. 1208aa(j)(5))

Subpart D—How Does a State Award Contracts?

§ 464.30 With whom must a State contract to establish a State literacy resource center?

(a) To establish a new State literacy resource center, the Governor of each State that receives funds under this part shall contract on a competitive basis with—

(1) The SEA;

(2) One or more local educational agencies;

(3) A State office on literacy;
(4) A volunteer organization;
(5) A community-based organization;
(6) An institution of higher education; or
(7) Another non-profit entity.
(b) Paragraph (a) of this section does not apply to funds under this part that a State uses to expand an existing State literacy resource center.

(Authority: 20 U.S.C. 1208aa(c)(2))

§ 464.31 Who may not review a proposal for a contract?

A party participating in a competition under § 464.30 may not review its own proposal for a contract or any proposal of a competitor for that contract.

(Authority: 20 U.S.C. 1208aa(c)(2))

§ 464.32 How is a regional literacy resource center established and operated?

(a) The States that participate in a regional literacy resource center shall agree on how the center is to be established and operated.
(b) Subject to the requirements of the Act and the regulations in this part, the States have discretion to determine how to establish and operate the regional center.

(Authority: 20 U.S.C. 1208aa (h) and (j))

Subpart E—What Post-Award Conditions Must Be Met by a State?

§ 464.40 May a State use funds to establish a State advisory council?

(a) Each State receiving funds under this part may use up to five percent of those funds—
(1) To establish and support a State advisory council on adult education and literacy under section 332 of the Act and 34 CFR 461.50–461.52; or
(2) To support an established State council to the extent that the State council meets the requirements of section 332 of the Act and 34 CFR 461.50–461.52.
(b) Each State receiving funds under this section to establish or support a State council under section 332 of the Act shall provide matching funds on a dollar-for-dollar basis.

(Authority: 20 U.S.C. 1208aa(g))

§ 464.41 What alternative uses may be made of equipment?

Equipment purchased under this part, when not being used to carry out the provisions of this part, may be used for other instructional purposes if—
(a) The acquisition of the equipment was reasonable and necessary for the purpose of conducting a properly designed project or activity under this part;
(b) The equipment is used after regular program hours or on weekends; and
(c) The other use is—
(1) Incidental to the use of the equipment under this part;
(2) Does not interfere with the use of the equipment under this part; and
(3) Does not add to the cost of using the equipment under this part.

(Authority: 20 U.S.C. 1208aa(e))

§ 464.42 What limit applies to purchasing computer hardware and software?

Not more than ten percent of funds received under any grant under this part may be used to purchase computer hardware or software.

(Authority: 20 U.S.C. 1208aa(f))

PART 472—NATIONAL WORKPLACE LITERACY PROGRAM

10. The authority citation for part 472 continues to read as follows:

Authority: 20 U.S.C. 1211(a), unless otherwise noted.

11. Section 472.20 is amended by adding a new paragraph (c), to read as follows:

§ 472.20 What priorities may the Secretary establish?

* * * * *

(c) In making awards under this part, the Secretary gives priority to applications from partnerships that include small businesses.

* * * * *

12. Section 472.30 is amended by removing and reserving paragraph (c) and by revising paragraph (d) to read as follows:

§ 472.30 What other requirements must be met under this program?

* * * * *

(c) [Reserved]
(d) An award under this program may be used to pay—
(1) 100 percent of the administrative costs incurred in establishing a project during the start-up period under paragraph (e) of this section by an SEA, LEA, or other entity described in § 472.2(a), that receives a grant under this part; and
(2) 70 percent of the costs of a project after the start-up period.

* * * * *

13. A new part 473 is added to read as follows:

PART 473—NATIONAL WORKFORCE LITERACY STRATEGIES PROGRAM

Subpart A—General

Sec.

Subpart B—How Does a Partnership Apply for an Award?

Subpart C—How Does the Secretary Make an Award?

Authority: 20 U.S.C. 1211, unless otherwise noted.

Subpart A—General

§ 473.1 What is the National Workforce Literacy Strategies Program?

In any fiscal year in which amounts appropriated pursuant to section 371(e) of the Act equal or exceed $25,000,000, the Secretary establishes a National Workforce Literacy Strategies Program to provide awards to assist unions, unions in collaboration with programs eligible for assistance under the Act and businesses, and small and medium-sized businesses, to facilitate the design and implementation of national strategies to effectively provide literacy and basic skills training to workers.

(Authority: 20 U.S.C. 1211(c)(1))

§ 473.2 Who is eligible for an award?

(a) Awards under this part are provided to exemplary partnerships between—
(1) A business, industry, or labor organization, or private industry council; and
(2) A State educational agency (SEA), a local educational agency (LEA), an institution of higher education, or a school (including an area vocational school, an employment and training agency, or a community-based organization).

(b) A partnership must include as partners at least one entity from paragraph (a)(1) of this section and at least one entity from paragraph (a)(2) of this section, and may include more than one entity from each group.

(c)(1) The partners shall apply jointly to the Secretary for funds.

(2) The partners shall enter into an agreement, in the form of a single document signed by all partners, designating one member of the partnership as the applicant and grantee. The agreement must also detail the role each partner plans to perform, and must bind each partner to every statement and assurance made in the application.

(Authority: 20 U.S.C. 1211(a)(1))

§ 473.3 What activities may the Secretary fund?

The Secretary provides awards under this part to establish large-scale national strategies in workforce literacy, which may include the following activities:

(a) Basic skills training that is—

(1) Cost-effective;

(2) Needed by employees; and

(3) Required by employers to establish a trainable workforce that can take advantage of further job-specific training and advance the productivity of the labor force on an individual, industry, or national level.

(b) Specific program offerings, which may include—

(1) English-as-a-second-language instruction;

(2) Communications skill building;

(3) Interpersonal skill building;

(4) Reading and writing skill building; and

(5) Computation and problem solving.

(c) Appropriate assessments of the literacy and basic skills needs of individual workers and the skill levels required by business.

(d) Cooperative arrangements with other organizations involved in providing literacy and basic skills training, including adult education organizations, vocational education organizations, community and junior colleges, community-based organizations, State-level agencies, and private industry councils.

(e) The establishment, as appropriate, of technology-based learning environments, such as computer-based learning centers.

(Authority: 20 U.S.C. 1211(c)(2))

§ 473.4 What priorities does the Secretary establish?

(a) In making awards under this part, the Secretary gives priority to applications from partnerships that include small businesses.

(b) Each year the Secretary may establish as a priority one or more of the types of projects described in paragraph (d) of this section.

(c) The Secretary announces these priorities in a notice published in the **Federal Register.**

(d) The Secretary may give priority to projects modeling a national strategy that—

(1) Is targeted to a business or industry type—

(i) That has been severely and adversely impacted by global competition; and

(ii) For whose workers basic skills training is expected to result in increased global competitiveness and productivity;

(2) Demonstrates new methods of involving workers in all aspects of program development, including project design, job task analysis, curriculum development, governance, and evaluation, that is integrated with team-based management or cross-training approaches to be used in the workplace; or

(3) Includes in project activities the identification, design, and testing of evaluation approaches and indicators that can relate learning gains to workplace outcomes such as increased employee readiness for promotion, and reductions in waste, turnover, and lost management time.

(Authority: 20 U.S.C. 1211(c))

§ 473.5 What regulations apply?

The following regulations apply to the National Workforce Literacy Strategies Program:

(a) The regulations in this part 473.

(b) The regulations in 34 CFR part 460.

(Authority: 20 U.S.C. 1211(c))

§ 473.6 What definitions apply?

(a) The definitions in 34 CFR 460.3 apply to this part.

(b) The definitions in 34 CFR part 472 also apply to this part.

(c) The following definitions also apply to this part:

Communications skills include not only speaking and listening in the context of work, but also communicating and receiving directions, presenting and interpreting work activities to other employees and supervisors, participating in meetings on quality, and giving and receiving information to and from customers.

Interpersonal skills include the ability to work with individuals with different backgrounds and to work as part of a team.

Problem solving includes mathematics and abilities in analysis, synthesis, sequencing, and decision-making.

(Authority: 20 U.S.C. 1211(c))

Subpart B—How Does a Partnership Apply for an Award?

§ 473.12 How does a partnership apply?

(a) Any partnership described in § 473.2 that desires to receive an award under this part shall submit an application to the Secretary.

(b)(1) The application must contain a plan—

(i) Specifying a strategy for designing and implementing workforce literacy and basic skills training for workers; and

(ii) Justifying the national, statewide, or industry-wide importance of this strategy.

(2) The application must include—

(i) A demonstration of need for literacy and basic skills training;

(ii) A description of the business or industry for which the strategy is to be established;

(iii) A statement of specific, measurable goals and participant outcomes;

(iv) A strategy for achieving the goals, including a description of the process to identify literacy and basic skills required by employers and the skills of individual workers, and a description of the specific services to be provided; and

(v) A description of the costs of the activities to be undertaken.

(Approved by the Office of Management and Budget under control number 1830–0512)

(Authority: 20 U.S.C. 1211(c)(3))

Subpart C—How Does the Secretary Make an Award?

§ 473.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 473.21.

(b) The Secretary awards up to 100 points for these criteria, including 10 points that the Secretary assigns in accordance with paragraph (d) of this section.

(c) The maximum possible score for each criterion is indicated in parentheses.

(d) For each competition under this part, the Secretary, in a notice published in the **Federal Register**, assigns 10 points among the criteria in § 473.21.

(Authority: 20 U.S.C. 1211(c))

§ 473.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program factors.* (15 points) The Secretary reviews each application to

determine the extent to which the project—

(1)(i) Will have a significant impact—

(A) On a workforce in a particular type of business or industry, such as textile manufacture or health care;

(B) On businesses and industries of a specific size, such as small businesses and industries; or

(C) On businesses and industries in a specific type of geographic area, such as urban or rural businesses and industries; or

(ii) Has an innovative approach, such as an interactive video curriculum or peer mentoring, that will provide a model that is replicable in other businesses or industries of a similar type, size, or geographic area;

(2) Demonstrates a strong relationship between instruction and the literacy requirements of actual jobs, especially the increased skill requirements of the changing workplace;

(3) Is targeted to adults with inadequate basic skills for whom the training described is expected to mean new employment, continued employment, career advancement, or increased productivity;

(4) Involves workers in designing and implementing the project and in evaluating its outcomes;

(5) Includes support services designed to overcome the barriers experienced by small and medium-sized businesses and their employees in participating in the project. Support services may include educational counseling, transportation, and child care during non-working hours while adult workers are participating in the project;

(6) Demonstrates the active commitment of all partners to accomplishing the goals of the project and the participant outcomes to be achieved; and

(7) Demonstrates the partnership's ability to continue the program when Federal funds are no longer available.

(b) *Extent of need for the project.* (12 points) The Secretary reviews each application to determine the extent to which the project meets specific needs, including consideration of—

(1) The extent to which the project will focus on demonstrated national needs for workforce literacy training of adult workers;

(2) The adequacy of the applicant's documentation of the national needs to be addressed by the project;

(3) How well those national needs will be met by the project;

(4) The benefits to adult workers and their businesses and industries that will result from meeting those national needs; and

(5) The extent to which the application demonstrates a relationship between the basic skills training to be provided to adult workers and subsequent job-specific training to be provided to those workers.

(c) *Quality of training.* (15 points) The Secretary reviews each application to determine the quality of training to be provided by the project, including the extent to which the project will—

(1) Use curriculum materials that are designed for adults and that reflect the needs of the workplace;

(2) Use individualized educational plans developed jointly by instructors and adult learners;

(3) Take place in a readily accessible environment conducive to adult learning; and

(4) Provide training through the partner that is an SEA, a local educational agency, an institution of higher education, or a school (including an area vocational school, an employment and training agency, or a community-based organization), unless transferring this activity to another partner is necessary and reasonable within the framework of the project.

(d) *Cooperative arrangements.* (5 points) The Secretary considers—

(1) The extent to which the project includes cooperative arrangements with organizations, other than partners, that are involved in providing literacy and basic skills training, including adult education organizations, vocational education organizations, community and junior colleges, community-based organizations, State level agencies, and private industry councils;

(2) The adequacy of the description of the roles of the organizations with whom these cooperative arrangements are made; and

(3) The extent to which the application demonstrates the active commitment of each of those organizations to accomplishing the goals of the project and the participant outcomes to be achieved.

(e) *Plan of operation.* (12 Points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the project goals and participant outcomes—

(i) Will accomplish the purposes of the National Workforce Literacy Strategies program;

(ii) Are attainable within the project period, given the project's budget and other resources;

(iii) Are susceptible to evaluation;

(iv) Are objective and measurable; and

(v) For a multi-year project, include specific objectives to be met, during each budget period, that can be used to determine the progress of the project toward meeting its intended goals and participant outcomes;

(3) The extent to which the plan of management is effective, ensures proper and efficient administration of the project, and includes—

(i) A description of the respective roles of each member of the partnership in carrying out the plan;—

(ii) A description of the activities to be carried out by any contractors under the plan; and

(iii) A description of the respective roles, including any cash or in-kind contributions, of any organizations that are not members of the partnership;

(4) The quality of the applicant's plan to use resources and personnel to achieve the objectives, goals, and intended participant outcomes described in the application;

(5) The quality of the applicant's plan to effectively disseminate, on a national, State, or local level, promising practices developed and found successful during the project period; and

(6) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disabling condition.

(f) *Applicant's experience and quality of key personnel.* (11 points)

(1) The Secretary reviews each application to determine the extent of the applicant's experience in providing literacy services to adult workers.

(2) The Secretary also reviews each application to determine the quality of key personnel that the applicant plans to use on the project, including—

(i) The qualifications of the project director, in relation to the purposes of the project;

(ii) The qualifications of each of the other key personnel, in relation to the purposes of the project;

(iii) The time that each person referred to in paragraphs (f)(2)(i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disabling condition.

(3) To determine personnel qualifications, the Secretary considers—

(i) Experience and training in fields related to the objectives, goals, and intended participant outcomes described in the application;

(ii) Experience and training in project management.

(g) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are clearly explained and appropriate to the project;

(2) Will be conducted by an independent evaluator;

(3) Will assess the impact of improving basic skills on workforce or industry productivity variables such as job turnover, attendance, waste or error rates, hourly production, and lost management time;

(4) Include formative evaluation activities to help assess student progress and program management and improve program operations;

(5) Are applied systematically throughout the project period and will determine how successful the project is in meeting its intended objectives, goals, and participant outcomes; and

(6) To the extent possible, are objective and produce data that are quantifiable.

(h) *Budget and cost-effectiveness.* (5 points)

(1) The Secretary reviews each application to determine if the project has an adequate budget and is cost effective.

(2) The Secretary considers the extent to which—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the purposes of the project.

(Approved by the Office of Management and Budget under control number 1830–0512)

(Authority: 20 U.S.C. 1211(c))

§ 473.22 What additional factors does the Secretary consider?

In addition to the criteria in § 473.21, the Secretary may consider geographic factors, such as rural and urban areas and national distribution.

(Authority: 20 U.S.C. 1211(c)(7))

§ 473.23 May the Secretary limit the design phase of a project?

The Secretary may limit the design phase of a project to a reasonable period.

(Authority: 20 U.S.C. 1211(c))

§ 473.24 May the Secretary limit the amount of funds for technology-based learning environments?

The Secretary may limit the amount or percentage of an award, or the amounts or percentages of all awards in a fiscal year, that may be used for technology-based learning environments, including amounts for hardware and software.

(Authority: 20 U.S.C. 1211(c))

§ 473.25 What is the Federal share of projects funded under this part?

An award under this part may not exceed 70 percent of the cost of a project.

(Authority: 20 U.S.C. 1211(c)(2), (5))

14. A new part 489 is added to read as follows:

PART 489—FUNCTIONAL LITERACY FOR STATE AND LOCAL PRISONERS PROGRAM

Subpart A—General

Sec.

Subpart B—How Does One Apply for a Grant?

Subpart C—How Does the Secretary Make an Award?

Subpart D—What Conditions Must be Met after an Award?

Authority: 20 U.S.C. 1211–2, unless otherwise noted.

Subpart A—General

§ 489.1 What is the Functional Literacy for State and Local Prisoners Program?

(a) The Secretary makes grants to eligible entities that elect to establish a demonstration or system-wide functional literacy program for adult prisoners, as described § 489.3.

(b) Grants under this part may be used for establishing, improving, expanding, or carrying out a program, and for developing the plans and submitting the reports required by this part.

(Authority: 20 U.S.C. 1211–2(a), (d)(1))

§ 489.2 Who is eligible for a grant?

A State correctional agency, a local correctional agency, a State correctional education agency, or a local correctional education agency is eligible for a grant under this part.

(Authority: 20 U.S.C. 1211–2(f)(1))

§ 489.3 What activities may the Secretary fund?

(a) To qualify for funding under § 489.1, a functional literacy program must—

(1) To the extent possible, make use of advanced technologies, such as interactive video- and computer-based adult literacy learning; and

(2) Include—

(i) A requirement that each person incarcerated in the system, prison, jail, or detention center who is not functionally literate, except a person described in paragraph (b) of this section, shall participate in the program until the person—

(A) Achieves functional literacy, or in the case of an individual with a disability, achieves a level of functional literacy commensurate with his or her ability;

(B) Is granted parole;

(C) Completes his or her sentence; or

(D) Is released pursuant to court order; and

(ii) A prohibition on granting parole to any person described in paragraph (a)(2)(i) of this section who refuses to participate in the program, unless the State parole board determines that the prohibition should be waived in a particular case; and

(iii) Adequate opportunities for appropriate education services and the screening and testing of all inmates for functional literacy and disabilities affecting functional literacy, including learning disabilities, upon arrival in the system or at the prison, jail, or detention center.

(b) The requirement of paragraph (a)(2)(i) does not apply to a person who—

(1) Is serving a life sentence without possibility of parole;

(2) Is terminally ill; or

(3) Is under a sentence of death.

(Authority: 20 U.S.C. 1211–2(b))

§ 489.4 What regulations apply?

The following regulations apply to the Functional Literacy for State and Local Prisoners Program:

(a) The regulations in this part 489.

(b) The regulations in 34 CFR 460.3.

(Authority: 20 U.S.C. 1211–2)

§ 489.5 What definitions apply?

(a) The definitions in 34 CFR 460.4 apply to this part.

(b) As used in this part—

Functional literacy means at least an eighth grade equivalence, or a functional criterion score, on a nationally recognized literacy assessment.

Local correctional agency means any agency of local government that

provides corrections services to incarcerated adults.

Local correctional education agency means any agency of local government, other than a local correctional agency, that provides educational services to incarcerated adults.

State correctional agency means any agency of State government that provides corrections services to incarcerated adults.

State correctional education agency means any agency of State government, other than a State correctional agency, that provides educational services to incarcerated adults.

(Authority: 20 U.S.C. 1211–2(f)(2))

Subpart B—How Does One Apply for a Grant?

§ 489.10 How does an eligible entity apply for a grant?

An eligible entity may receive a grant under this part if the entity submits an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require, including, but not limited to, the following:

(a) An assurance that the entity will provide the Secretary such data as the Secretary may request concerning the cost and feasibility of operating the functional literacy programs authorized by § 489.1(a), including the annual reports required by § 489.30.

(b) A detailed plan outlining the methods by which the provisions of §§ 489.1 and 489.3 will be met, including specific goals and timetables. (Approved by the Office of Management and Budget under control number 1830–0512.)

(Authority: 20 U.S.C. 1211–2(d)(2))

Subpart C—How Does the Secretary Make an Award?

§ 489.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 489.21.

(b) The Secretary awards up to 100 points for these criteria, including 15 points that the Secretary assigns in accordance with paragraph (d) of this section.

(c) The maximum possible score for each criterion is indicated in parentheses.

(d) For each competition under this part, the Secretary, in a notice published in the **Federal Register**, assigns 15 points among the criteria in § 489.21.

(Authority: 20 U.S.C. 1211–2)

§ 489.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program factors.* (15 points) The Secretary reviews the application to determine the quality of the proposed project, including the extent to which the application includes—

(1) A clear description of the services to be offered;

(2) A complete description of the methodology to be used, including a thorough assessment of all offenders in the system and assessments necessary to identify offenders with disabilities affecting functional literacy;

(3) Flexibility in the manner that services are offered, including the provision of accessible class schedules;

(4) A strong relationship between skills taught and the literacy and skill requirements of the changing workplace; and

(5) An innovative approach, such as interactive video curriculum or peer tutoring that will provide a model that is replicable in other correctional facilities of a similar type or size; and

(6) Staff in-service education.

(b) *Educational significance.* (15 points) The Secretary reviews each application to determine the extent to which the applicant proposes—

(1) Project objectives that contribute to the improvement of functional literacy;

(2) To use unique and innovative techniques to produce benefits that address functional literacy problems and needs that are of national significance; and

(3) To demonstrate how well those national needs will be met by the project.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the project includes specific intended outcomes that—

(i) Will accomplish the purposes of the program;

(ii) Are attainable within the project period, given the project's budget and other resources;

(iii) Are susceptible to evaluation;

(iv) Are objective and measurable; and

(v) For a multi-year project, include specific objectives to be met, during each budget period, that can be used to determine the progress of the project toward meeting its intended outcomes;

(3) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective and intended outcome during the period of Federal funding; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disabling condition.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are clearly explained and appropriate to the project;

(2) Will determine how successful the project is in meeting its intended outcomes, including an assessment of the effectiveness of the project in improving functional literacy of prisoners. To the extent feasible, the assessment must include a one-year post-release review, during the grant period, to measure the success of the project with respect to those prisoners who received services and were released. The assessment must involve comparison of the project to other existing education and training programs or no treatment for individuals, as appropriate. The evaluation must be designed to produce findings that, if positive and significant, can be used in submission of an application to the Department's Program Effectiveness Panel. To assess program effectiveness, consideration may be given to implementing a random assignment evaluation design. (Review criteria for the Program Effectiveness Panel are provided in 34 CFR 786.12.);

(3) Provide for an assessment of the efficiency of the program's replication efforts, including dissemination activities and technical assistance provided to other projects;

(4) Include formative evaluation activities to help assess program management and improve program operations; and

(5) To the extent possible, are objective and produce data that are quantifiable.

(e) *Demonstration and dissemination.* (10 points) The Secretary reviews each application to determine the efficiency of the plan for demonstrating and disseminating information about project activities and results throughout the project period, including—

(1) High quality in the design of the demonstration and dissemination plan;

(2) Identification of target groups and provisions for publicizing the project at the local, State, and national levels by conducting or delivering presentations at conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(3) Provisions for demonstrating the methods and techniques used by the project to others interested in replicating these methods and techniques, such as by inviting them to observe project activities;

(4) A description of the types of materials the applicant plans to make available to help others replicate project activities and the methods for making the materials available; and

(5) Provisions for assisting others to adopt and successfully implement the project or methods and techniques used by the project.

(f) *Key personnel.* (5 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications, in relation to the objectives and planned outcomes of the project, of the project director;

(ii) The qualifications, in relation to the objectives and planned outcomes of the project, of each of the other key personnel to be used in the project, including any third-party evaluator;

(iii) The time that each person referred to in paragraphs (f)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disabling condition.

(2) To determine personnel qualifications under paragraphs (f)(1) (i) and (ii) of this section, the Secretary considers experience and training in project management and in fields related to the objectives and planned outcomes of the project.

(g) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which the budget—

(1) Is cost effective and adequate to support the project activities;

(2) Contains costs that are reasonable and necessary in relation to the objectives of the project; and

(3) Proposes using non-Federal resources available from appropriate employment, training, and education agencies in the State to provide project services and activities and to acquire project equipment and facilities.

(h) *Adequacy of resources and commitment.* (5 points)

(1) The Secretary reviews each application to determine the extent to which the applicant plans to devote adequate resources to the project. The Secretary considers the extent to which—

(i) Facilities that the applicant plans to use are adequate; and

(ii) Equipment and supplies that the applicant plans to use are adequate.

(2) The Secretary reviews each application to determine the applicant's commitment to the project, including the extent to which—

(i) Non-Federal resources are adequate to provide project services and activities, especially resources of the public and private sectors; and

(ii) The applicant has the capacity to continue, expand, and build upon the project when Federal assistance ends. (Approved by the Office of Management and Budget under control number 1830–0512)

(Authority: 20 U.S.C. 1211–2)

Subpart D—What Conditions Must be Met after an Award?

§ 489.30 What annual report is required?

(a) Within 90 days after the close of the first calendar year in which a literacy program authorized by § 489.1 is placed in operation, and annually for each of the 4 years thereafter, a grantee shall submit a report to the Secretary with respect to its literacy program.

(b) A report under paragraph (a) of this section must disclose—

(1) The number of persons who were tested for eligibility during the preceding year;

(2) The number of persons who were eligible for the literacy program during the preceding year;

(3) The number of persons who participated in the literacy program during the preceding year;

(4) The name and types of tests that were used to determine functional literacy and the names and types of tests that were used to determine disabilities affecting functional literacy;

(5) The average number of hours of instruction that were provided per week and the average number per student during the preceding year;

(6) Sample data on achievement of participants in the program, including the number of participants who achieved functional literacy;

(7) Data on all direct and indirect costs of the program; and

(8) Information on progress toward meeting the program's goals.

(Approved by the Office of Management and Budget under control number 1830–0512.)

(Authority: 20 U.S.C. 1211–2(c))

15. A new part 490 is added to read as follows:

PART 490—LIFE SKILLS FOR STATE AND LOCAL PRISONERS PROGRAM

Subpart A—General

Sec.

Subpart B—How Does One Apply for a Grant?

Subpart C—How Does the Secretary Make an Award?

Authority: 20 U.S.C. 1211–2, unless otherwise noted.

Subpart A—General

§ 490.1 What is the Life Skills for State and Local Prisoners Program?

The Secretary may make grants to eligible entities to assist them in establishing and operating programs designed to reduce recidivism through the development and improvement of life skills necessary for reintegration of adult prisoners into society.

(Authority: 20 U.S.C. 1211–2(e)(1))

§ 490.2 Who is eligible for a grant?

A State correctional agency, a local correctional agency, a State correctional education agency, or a local correctional education agency is eligible for a grant under this part.

(Authority: 20 U.S.C. 1211–2(f)(1))

§ 490.3 What regulations apply?

The following regulations apply to the Life Skills for State and Local Prisoners Program:

(a) The regulations in this part 490.

(b) The regulations in 34 CFR 460.3.

(Authority: 20 U.S.C. 1211–2)

§ 490.4 What definitions apply?

(a) The definitions in 34 CFR 460.4 apply to this part.

(b) As used in this part—

Life skills includes self-development, communication skills, job and financial skills development, education, interpersonal and family relationship development, and stress and anger management.

Local correctional agency means any agency of local government that provides corrections services to incarcerated adults.

Local correctional education agency means any agency of local government, other than a local correction agency, that provides educational services to incarcerated adults.

State correctional agency means any agency of State government that provides corrections services to incarcerated adults.

State correctional education agency means any agency of State government, other than a State correctional agency, that provides educational services to incarcerated adults.

(Authority: 20 U.S.C. 1211–2(f)(3))

Subpart B—How Does One Apply for a Grant?

§ 490.10 How does an eligible entity apply for a grant?

To receive a grant under this part, an eligible entity shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary shall require, including, but not limited to, an assurance that the entity will report annually to the Secretary on the participation rate, cost, and effectiveness of the program and any other aspect of the program on which the Secretary may request information. (Approved by the Office of Management and Budget under control number 1830–0512.)

(Authority: 20 U.S.C. 1211–2(e)(2))

Subpart C—How Does the Secretary Make an Award?

§ 490.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the criteria in § 490.21.

(b) The Secretary awards up to 100 points for these criteria, including 15 points that the Secretary assigns in accordance with paragraph (d) of this section.

(c) The maximum possible score for each criterion is indicated in parentheses.

(d) For each competition under this part, the Secretary, in a notice published in the Federal Register, assigns 15 points among the criteria in § 490.21.

(Authority: 20 U.S.C. 1211–2)

§ 490.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program factors.* (15 points) The Secretary reviews the application to determine the quality of the proposed project, including the extent to which the application includes—

(1) A clear description of the services to be offered; and

(2) Life skills education designed to prepare adult offenders to reintegrate successfully into communities, schools and the workplace.

(b) *Educational significance.* (15 points) The Secretary reviews each application to determine the extent to which the applicant proposes—

(1) Project objectives that contribute to the improvement of life skills;

(2) To use unique and innovative techniques to produce benefits that address life skills problems and needs that are of national significance; and

(3) To demonstrate how well those national needs will be met by the project.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the project includes specific intended outcomes that—

(i) Will accomplish the purposes of the program;

(ii) Are attainable within the project period, given the project's budget and other resources;

(iii) Are susceptible to evaluation;

(iv) Are objective and measurable; and

(v) For a multi-year project, include specific objectives to be met, during each budget period, that can be used to determine the progress of the project toward meeting its intended outcomes;

(3) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective and intended outcome during the period of Federal funding; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disabling condition.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are clearly explained and appropriate to the project;

(2) Will determine how successful the project is in meeting its intended outcomes, including an assessment of the effectiveness of the project in improving life skills of prisoners. To the extent feasible, the assessment must include a one-year post-release review, during the grant period, to measure the success of the project with respect to those prisoners who received services and were released. The assessment must involve comparison of the project to other existing education and training programs or no treatment for individuals, as appropriate. The evaluation must be designed to produce findings that, if positive and significant, can be used in submission of an application to the Department's Program Effectiveness Panel. To assess program effectiveness, consideration may be given to implementing a random assignment evaluation design. (Review criteria for the Progam Effectiveness Panel are provided in 34 CFR 786.12.);

(3) Provide for an assessment of the efficiency of the program's replication efforts, including dissemination activities and technical assistance provided to other projects;

(4) Include formative evaluation activities to help assess program management and improve program operations; and

(5) To the extent possible, are objective and produce data that are quantifiable.

(e) *Demonstration and dissemination.* (10 points) The Secretary reviews each application to determine the efficiency of the plan for demonstrating and disseminating information about project activities and results throughout the project period, including—

(1) High quality in the design of the demonstration and dissemination plan;

(2) Identification of target groups and provisions for publicizing the project at the local, State, and national levels by conducting or delivering presentations at conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(3) Provisions for demonstrating the methods and techniques used by the project to others interested in replicating these methods and techniques, such as by inviting them to observe project activities;

(4) A description of the types of materials the applicant plans to make available to help others replicate project activities and the methods for making the materials available; and

(5) Provisions for assisting others to adopt and successfully implement the project or methods and techniques used by the project.

(f) *Key personnel.* (5 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications, in relation to the objectives and planned outcomes of the project, of the project director;

(ii) The qualifications, in relation to the objectives and planned outcomes of the project, of each of the other key personnel to be used in the project, including any third-party evaluator;

(iii) The time that each person referred to in paragraphs (f)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disabling condition.

(2) To determine personnel qualifications under paragraphs (f)(1) (i) and (ii) of this section, the Secretary considers experience and training in project management and in fields related to the objectives and planned outcomes of the project.

(g) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which the budget—

(1) Is cost effective and adequate to support the project activities;

(2) Contains costs that are reasonable and necessary in relation to the objectives of the project; and

(3) Proposes using non-Federal resources available from appropriate employment, training, and education agencies in the State to provide project services and activities and to acquire project equipment and facilities.

(h) *Adequacy of resources and commitment.* (5 points)

(1) The Secretary reviews each application to determine the extent to which the applicant plans to devote adequate resources to the project. The Secretary considers the extent to which—

(i) Facilities that the applicant plans to use are adequate; and

(ii) Equipment and supplies that the applicant plans to use are adequate.

(2) The Secretary reviews each application to determine the applicant's commitment to the project, including the extent to which—

(i) Non-Federal resources are adequate to provide project services and activities, especially resources of the public and private sectors; and

(ii) The applicant has the capacity to continue, expand, and build upon the project when Federal assistance ends.

(Approved by the Office of Management and Budget under control number 1830–0512.)

(Authority: 20 U.S.C. 1211–2)

§ 490.22 What additional factor does the Secretary consider?

In addition to the points awarded under the selection criteria in § 490.21, the Secretary awards up to 5 points to applications for projects that have the greatest potential for innovation, effectiveness, and replication in other systems, jails, and detention centers.

(Authority: 20 U.S.C. 1211–2(e)(3))

[FR Doc. 92–12884, Filed 6–4–92; 8:45 am]

BILLING CODE 4000–01–M

federal register

Friday
June 5, 1992

Part III

Department of Education

Functional Literacy for State and Local Prisoners Program; Notice Inviting New Awards for Fiscal Year 1992

DEPARTMENT OF EDUCATION

[CFDA No.: 84.255-A]

Functional Literacy for State and Local Prisoners Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1992

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of Program: The Functional Literacy for State and Local Prisoners Program provides financial assistance for the development of a demonstration or systemwide functional literacy program for adult prisoners.

This program can help further the purposes of AMERICA 2000, the President's education strategy to help America move itself toward the National Educational Goals. Specifically, the program can contribute to the President's objective—as stated in Track III of the AMERICA 2000 strategy ("Transforming America into 'A Nation of Students' ")—of reviewing current Federal job training efforts and identifying successful ways of motivating and enabling individuals to receive the comprehensive services, education, and skills necessary to achieve economic independence. The Functional Literacy for State and Local Prisoners Program also directly supports National Education Goal 5—ensuring that every adult American will be literate and possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Eligible Applicants: (1) A State correctional agency; (2) A local correctional agency; (3) A State correctional education agency; (4) A local correctional education agency.

Deadline for Transmittal of Applications: July 21, 1992.

Deadline for Intergovernmental Review: September 19, 1992.

Available Funds: $5,000,000.

Estimated Range of Awards: $300,000–$500,000.

Estimated Average size of Awards: $416,666.

Estimated Number of Awards: 12.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 24 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals and Nonprofit Organizations).

(2) 34 CFR part 75 (Direct Grant Programs).

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(7) 34 CFR part 82 (New Restrictions on Lobbying).

(8) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(9) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) The regulations for this program in 34 CFR part 489.

Selection Criteria

The Secretary uses the following selection criteria to evaluate applications for new grants under this competition.

The maximum score for all of these criteria is 100 points. The maximum score for each criterion is indicated in parentheses.

The regulations in 34 CFR 489.20 provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition, the Secretary distributes the reserved 15 points as follows: 10 additional points to the selection criterion in 34 CFR 489.21(a) (Program factors) for a total of 25 points for this criterion; and 5 additional points to the selection criterion in 34 CFR 489.21(b) (Educational significance) for a total of 20 points for this criterion.

(a) *Program factors.* (25 points) The Secretary reviews the application to determine the quality of the proposed project, including the extent to which the application includes—

(1) A clear description of the services to be offered;

(2) A complete description of the methodology to be used, including a thorough assessment of all offenders in the system and assessments necessary to identify offenders with disabilities affecting functional literacy;

(3) Flexibility in the manner that services are offered, including the provision of accessible class schedules;

(4) A strong relationship between skills taught and the literacy and skill requirements of the changing workplace; and

(5) An innovative approach, such as interactive video curriculum or peer tutoring that will provide a model that is replicable in other correctional facilities of a similar type or size; and

(6) Staff in-service education.

(b) *Educational significance.* (20 points) The Secretary reviews each application to determine the extent to which the applicant proposes—

(1) Project objectives that contribute to the improvement of functional literacy;

(2) To use unique and innovative techniques to produce benefits that address functional literacy problems and needs that are of national significance; and

(3) To demonstrate how well those national needs will be met by the project.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the project includes specific intended outcomes that—

(i) Will accomplish the purposes of the program;

(ii) Are attainable within the project period, given the project's budget and other resources;

(iii) Are susceptible to evaluation;

(iv) Are objective and measurable; and

(v) For a multi-year project, include specific objectives to be met, during each budget period, that can be used to determine the progress of the project toward meeting its intended outcomes;

(3) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective and intended outcome during the period of Federal funding; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disabling condition.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are clearly explained and appropriated to the project;

(2) Will determine how successful the project is in meeting its intended outcomes, including an assessment of the effectiveness of the project in improving functional literacy of prisoners. To the extent feasible, the assessment must include a one-year post-release review, during the grant period, to measure the success of the project with respect to those prisoners who received services and were released. The assessment must involve comparison of the project to other existing education and training programs or no treatment for individuals, as appropriate. The evaluation must be designed to produce findings that, if positive and significant, can be used in submission of an application to the Department's Program Effectiveness Panel. To assess program effectiveness, consideration may be given to implementing a random assignment evaluation design. (Review criteria for the Program Effectiveness Panel are provided in 34 CFR 786.12.);

(3) Provide for an assessment of the efficiency of the program's replication efforts, including dissemination activities and technical assistance provided to other projects;

(4) Include formative evaluation activities to help assess program management and improve program operations; and

(5) To the extent possible, are objective and produce data that are quantifiable.

(e) *Demonstration and dissemination.* (10 points) The Secretary reviews each application to determine the efficiency of the plan for demonstrating and disseminating information about project activities and results throughout the project period, including—

(1) High quality in the design of the demonstration and dissemination plan;

(2) Identification of target groups and provisions for publicizing the project at the local, State, and national levels by conducting or delivering presentations at conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(3) Provisions for demonstrating the methods and techniques used by the project to others interested in replicating these methods and techniques, such as by inviting them to observe project activities;

(4) A description of the types of materials the applicant plans to make available to help others replicate project activities and the methods for making the materials available; and

(5) Provisions for assisting others to adopt and successfully implement the project or methods and techniques used by the project.

(f) *Key personnel.* (5 points)

(1) The Secretary reviews each application to determine the quality of key pesonnel the applicant plans to use on the project, including—

(i) The qualifications, in relation to the objectives and planned outcomes of the project, of the project director;

(ii) The qualifications, in relation to the objectives and planned outcomes of the project, of each of the other key personnel to be used in the project, including any third-party evaluator;

(iii) The time that each person referred to in paragraphs (f)(1)(i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disabling condition.

(2) To determine personnel qualifications under paragraphs (f)(1)(i) and (ii) of this section, the Secretary considers experience and training in project management and in fields related to the objectives and planned outcomes of the project.

(g) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which the budget—

(1) Is cost effective and adequate to support the project activities;

(2) Contains costs that are reasonable and necessary in relation to the objectives of the project; and

(3) Proposes using non-Federal resources available from appropriate employment, training, and education agencies in the State to provide project services and activities and to acquire project equipment and facilities.

(h) *Adequacy of resources and commitment.* (5 points)

(1) The Secretary reviews each application to determine the extent to which the applicant plans to devote adequate resources to the project. The Secretary considers the extent to which—

(i) Facilities that the applicant plans to use are adequate; and

(ii) Equipment and supplies that the applicant plans to use are adequate.

(2) The Secretary reviews each application to determine the applicant's commitment to the project, including the extent to which—

(i) Non-Federal resources are adequate to provide project services and activities, especially resources of the public and private sectors; and

(ii) The applicant has the capacity to continue, expand, and build upon the project when Federal assistance ends.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on April 2, 1992 (57 FR 11354).

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, Executive Order 12372—CFDA No. 84.255–A, U.S. Department of Education, room 4161, 400 Maryland Avenue, SW., Washington, DC 20202–0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. *Do not send applications to the above address.*

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and six copies of the application on or before the deadline

date to: U.S. Department of Education Application Control Center, Attention: (CFDA #84.255–A) Washington, DC 20202–4725.

or

(2) Hand deliver the original and six copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education Application Control Center, Attention: (CFDA #84.255–A), room 3633, Regional Office Building #3, 7th and D Streets, SW, Washington, DC 20202–4725.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgement to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9494.

(3) The CFDA number—and suffix letter, if any—of the competition under which the application is being submitted, must be indicated on the outside of the envelope and in Item 10 of the Application for Federal Assistance (Standard Form 424).

Application Instructions and Forms

To apply for an award under this program competition, your application must be organized in the following order and include the following five parts:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)).

Part II: Budget Information.

Part III: Budget Narrative.

Part IV: Program Narrative.

Part V: Additional Assurances and Certifications:

a. Assurances—Non-Construction Programs (Standard Form 424B).

b. Certification regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80-0013) and Instructions.

c. Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and Instructions. (NOTE: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department).

d. Disclosure of Lobbying Activities (Standard Form LLL–A) (if applicable) and Instructions, and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL–A).

All forms and instructions are included as Appendix A of this notice. Questions and answers pertaining to this program are included, as Appendix B, to assist potential applicants.

All applicants must submit one original signed application, including ink signatures on all forms and assurances and six copies of the application. Please mark each application as original or copy.

No grant may be awarded unless a completed application form has been received. (20 U.S.C. 1241–1391).

For Further Information Contact

Gail M. Schwartz, U.S. Department of Education, 400 Maryland Avenue, SW., (Room 4512—MES), Washington, DC 20202–7242. Telephone (202) 732–3892. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 2420a

Dated: May 20, 1992.

Betsy Brand,

Assistant Secretary, Office of Vocational and Adult Education.

Appendix A

BILLING CODE 4000-01-M

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☒ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (*give city, county, state, and zip code*):	Name and telephone number of the person to be contacted on matters involving this application (*give area code*)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

8. TYPE OF APPLICATION:
☒ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A Increase Award B Decrease Award C Increase Duration
D Decrease Duration Other (*specify*)

7. TYPE OF APPLICANT: (*enter appropriate letter in box*) ☐
A. State H. Independent School Dist.
B. County I. State Controlled Institution of Higher Learning
C. Municipal J. Private University
D. Township K. Indian Tribe
E. Interstate L. Individual
F. Intermunicipal M. Profit Organization
G. Special District N. Other (Specify) _____

9. NAME OF FEDERAL AGENCY:
U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 2 5 5A
TITLE: Functional Literacy for State and Local Prisoners Program

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (*cities, counties, states, etc.*):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON
DATE _____
b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	A	B	C
1. Personnel			
2. Fringe Benefits (Rate %)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Costs/Stipends			
11. TOTAL, Federal Funds Requested (lines 8 through 10)			

SECTION B - Cost Sharing Summary (if appropriate)

	A	B	C
1. Cash Contribution			
2. In-Kind Contribution (only costs specifically for this project)			
3. TOTAL, Cost Sharing (Rate %)			

NOTE: For FULLY-FUNDED PROJECTS use Column A to record the first 12-month budget period; Column B to record the remaining months of the project; and Column C to record the total.

For MULTI-YEAR PROJECTS use Column A to record the first 12-month budget period; Column B to record the second 12-month budget period; and Column C to record the third 12-month budget period.

SECTION C - Budget Estimates (Federal Funds Only) For Balance of Project

Budget Periods			
Second	Third	Fourth	Fifth

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. Personnel: Show salaries to be paid to project personnel.

2. Fringe Benefits: Indicate the rate and amount of fringe benefits.

3. Travel: Indicate the amount requested for both inter- and intra-State travel of project staff. Include funds for at least one trip for two people to attend a project director's meeting in Washington, D.C.

4. Equipment: Indicate the cost of non-expendable personal property that has a useful life of more than one year and a cost of $300 or more per unit ($5,000 or more if State, Local, or Tribal Government).

5. Supplies: Include the cost of consumable supplies and materials to be used during the project.

6. Contractual: Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment; and (2) sub-contracts.

7. Other: Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.

8. Total, Direct Cost: Show the total for lines 1 through 7.

9. Indirect Costs: Indicate the rate and amount of indirect costs. NOTE: For training grants, the indirect cost rate cannot exceed 8%.

10. Training/Stipend Cost: (if allowable)

11. TOTAL, Federal Funds Requested: Show total for lines 8 through 10.

SECTION B - Cost Sharing Summary

Indicate the actual rate and amount of cost sharing when there is a cost sharing requirement. If cost sharing is required by program regulations, the local share required refers to a percentage of TOTAL PROJECT COST, not of Federal funds.

SECTION C - Budget Estimates (Federal Funds Only) for Balance of Project

If the project period exceeds 12 months, include cost estimates for the continuation budget periods, as appropriate. This SECTION does not apply to projects that are full-funded.

BILLING CODE 4000-01-C

Instructions for Part III—Budget Narrative

The budget narrative should explain, justify, and, if needed, clarify your budget summary. For each line item (personnel, fringe benefits, travel, etc.) in your budget, explain why it is there and how you computed the costs.

Please limit this section to no more than five pages. Be sure that each page of your application is numbered consecutively.

Instructions for Part IV—Program Narrative

The program narrative will comprise the largest portion of your application. This part is where you spell out the who, what, when, where, why, and how of your proposed project.

Although you will not have a form to fill out for your narrative, there is a format. This format is the selection criteria. Because your application will be reviewed and rated by a review panel on the basis of the selection criteria, your narrative should follow the order and format of the criteria.

Before preparing your application, you should carefully read the legislation and regulations of the program, eligibility requirements, information on any priority set by the Secretary, and the selection criteria for this competition.

Your program narrative should be clear, concise, and to the point. Begin the narrative with a one page abstract or summary of your proposed project. Then describe the project in detail, addressing each selection criterion in order.

The Secretary strongly requests you to limit the program narrative to no more than 30 double-spaced, typed pages (on one side only), although the Secretary will consider your application if it is longer. Be sure to number consecutively *ALL* pages in your application.

You may include supporting documentation as appendices. Be sure that this material is concise and pertinent to this program competition.

You are advised that—

(a) The Department considers only information contained in the application in ranking applications for funding consideration. Letters of support sent separately from the formal application package are not considered in the review by the technical review panels. (34 CFR 75.217).

(b) The technical review panel evaluates each application solely on the basis of the established technical review criteria. Letters of support contained in the application will strengthen the application only if they contain commitments that pertain to the established technical review criteria, such as commitment and resources.

Additional Materials

Instructions for Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 90 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project, OMB 1830–0512, Washington, DC 20503. (Information collection approved under OMB control number 1830–0512. Expiration date: 6/30/92.)

BILLING CODE 4000-01-M

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about--

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013, 6/90 (Replaces ED 80-0008, 12/89; ED Form GCS-008, (REV. 12/88); ED 80-0010, 5/90; and ED 80-0011, 5/90, which are obsolete)

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter ____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier ____, *if known:* Congressional District, *if known:*	Congressional District, *if known:*
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable:* _____
8. Federal Action Number, *if known:*	9. Award Amount, *if known:* $
10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI):*	b. Individuals Performing Services *(including address if different from No. 10a)* *(last name, first name, MI):*

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply)*:	13. Type of Payment *(check all that apply)*:
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment *(check all that apply)*: ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____

Print Name: _____

Title: _____

Telephone No.: _____ Date: _____

Federal Use Only:

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Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

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Standard Form - LLL-A

Appendix B

Potential applicants frequently direct questions to officials of the Department regarding application notices and programmatic and administrative regulations governing various direct grant programs. To assist potential applicants the Department has assembled the following most commonly asked questions.

Q. Can we get an extension of the deadline?

A. No. A closing date may be changed only under extraordinary circumstances. Any change must be announced in the **Federal Register** and apply to all applications. Waivers for individual applications cannot be granted regardless of the circumstances.

Q. How many copies of the application should I submit and must they be bound?

A. Our new policy calls for an original and six copies to be submitted. The binding of applications is optional.

Q. We just missed the deadline for the XXX competition. May we submit under another competition?

A. Yes, however, the likelihood of success is not good. A properly prepared application must meet the requirements of the competition to which it is submitted.

Q. I'm not sure which competition is most appropriate for my project. What should I do?

A. We are happy to discuss any questions with you and provide clarification on the unique elements of the various competitions.

Q. Will you help us prepare our application?

A. We are happy to provide general program information. Clearly, it would be appropriate for staff to participate in the actual writing of an application, but we can respond to specific questions about application requirements, evaluation criteria, and the priorities. Applicants should understand that this previous contact is not required, nor will it in any way influence the success of an application.

Q. When will I find out if I'm going to be funded?

A. You can expect to receive notification within 3 to 4 months of the application closing date, depending on the number of applications received and the number of competitions with closing dates at about the same time.

Q. Once my application has been reviewed by the review panel, can you tell me the outcome?

A. No. Every year we are called by a number of applicants who have legitimate reasons for needing to know the outcome of the review prior to official notification. Some applicants need to make job decisions, some need to notify a local school district, etc. Regardless of the reason, because final funding decisions have not been made at that point, we cannot share information about the review with anyone.

Q. Will my application be returned if I am not funded?

A. We no longer return unsuccessful applications. Thus, applicants should retain at least one copy of the application.

Q. Can I obtain copies of reviewers' comments?

A. Upon written request, reviewers' comments will be mailed to unsuccessful applicants.

Q. Is travel allowed under these projects?

A. Travel associated with carrying out the project is allowed. Because we may request the project director of funded projects to attend an annual project directors meeting, you may also wish to include a trip or two to Washington, D.C. in the travel budget. Travel to conferences is sometimes allowed when it is for purposes of dissemination.

Q. If my application receives high scores from the reviewers, does that mean that I will receive funding?

A. Not necessarily. It is often the case that the number of applications scored highly by the reviewers exceeds the dollars available for funding projects under a particular competition. The order of selection, which is based on the scores of all the applications and other relevant factors, determines the applications that can be funded.

Q. What happens during negotiations?

A. During negotiations technical and budget issues may be raised. These are issues that have been identified during the panel and staff reviews that require clarification. Sometimes issues are stated as "conditions." These are issues that have been identified as so critical that the award cannot be made unless those conditions are met. Questions may also be raised about the proposed budget. Generally, these issues are raised because there is inadequate justification or explanation of a particular budget item, or because the budget item seems unimportant to the successful completion of the project. If you are asked to make changes that you feel could seriously affect the project's success, you may provide reasons for not making the changes or provide alternative suggestions. Similarly, if proposed budget reductions will, in your opinion, seriously affect the project activities, you may explain why and provide additional justification for the proposed expenses. An award cannot be made until all negotiation issues have been resolved.

Q. How do I provide an assurance?

A. Except for SF-424B, "Assurances—Non-Construction Programs," simply state in writing that you are meeting a proscribed requirement.

Q. Where can copies of the **Federal Register**, program regulations, and Federal statutes be obtained?

A. Copies of these materials can usually be found at your local library. If not, they can be obtained from the Government Printing Office by writing to: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Telephone: (202) 783-3238. When requesting copies of regulations or statutes, it is helpful to use the specific name, public law number, or part number. The material referenced in this notice should be referred to as follows:

(1) Functional Literacy for State and Local Prisoners Program (CFDA No.: 84.255-A).

(2) Education Department General Administrative Regulations (EDGAR) 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86 and 489.

(3) Program regulations for the Functional Literacy for State and Local Prisoners Program, 34 CFR part 489 (note that these regulations are published elsewhere in this issue of the **Federal Register**).

[FR Doc. 92-12885 Filed 6-4-92; 8:45 am]

BILLING CODE 4000-01-M

federal register

Friday
June 5. 1992

Part IV

Department of Education

National Workplace Literacy Program; Notice Inviting Applications for New Awards for Fiscal Year 1993; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.198]

National Workplace Literacy Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1993

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of Program: The National Workplace Literacy Program provides assistance for demonstration projects that teach literacy skills needed in the workplace through exemplary education partnerships between business, industry, or labor organizations and educational organizations.

Eligible Applicants

(a) Awards are provided to exemplary partnerships between—

(1) A business, industry, or labor organization, or private industry council; and

(2) A State educational agency, local educational agency, institution of higher education, or school (including an area vocational school, an employment and training agency, or a community-based organization).

(b) A partnership must include as partners at least one entity from paragraph (a)(1) and at least one entity from paragraph (a)(2), and may include more than one entity from each group.

(c)(1) The partners shall apply jointly to the Secretary for funds.

(2) The partners shall enter into an agreement, in the form of a single document signed by all partners, designating one member of the partnership as the applicant and the grantee. The agreement must also detail the role each partner plans to perform, and must bind each partner to every statement and assurance made in the application. Applications are governed by the EDGAR provisions in 34 CFR 75.127–75.129 regarding group applications.

Deadline for Transmittal of Applications: July 10, 1992.

Deadline for Intergovernmental Review: September 8, 1992.

Available Funds: $19,251,000.

Estimated Range of Awards: $121,000 to $1,000,000.

Estimated Average Size of Awards: $385,000.

Estimated Number of Awards: 50.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 18 months.

Applicable Regulations

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals and Nonprofit Organizations).

(2) 34 CFR part 75 (Direct Grant Programs).

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(7) 34 CFR part 82 (New Restrictions on Lobbying).

(8) 34 CFR part 85 (Governmentwide Debarment and Suspension) (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(9) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) The regulations for this program in 34 CFR parts 460, 461, and 472.

Description of Program: The Secretary provides grants or cooperative agreements to projects designed to improve the productivity of the workforce through improvement of literacy skills in the workplace by—

(a) Providing adult literacy and other basic skills services and activities;

(b) Providing adult secondary education services and activities that may lead to the completion of a high school diploma or its equivalent;

(c) Meeting the literacy needs of adults with limited English proficiency;

(d) Upgrading or updating basic skills of adult workers in accordance with changes in workplace requirements, technology, products, or processes;

(e) Improving the competency of adult workers in speaking, listening, reasoning, and problem solving; or

(f) Providing educational counseling, transportation, and child care services for adult workers during nonworking hours while the workers participate in the project.

This program supports AMERICA 2000, the President's strategy for moving the Nation towards the National Education Goals. The National Workplace Literacy Program is one means of transforming America into a "Nation of Students" and strengthening the Nation's education effort for yesterday's students who are today's workers. The President believes that learning is a life-long challenge. Approximately 85 percent of America's workers for the year 2000 are already in the workforce. Improving schools for today's and tomorrow's students is not sufficient to ensure a competitive America in the year 2000. The President has called on Americans to move from "A Nation at Risk" to "A Nation of Students" by continuing to enhance the knowledge and skills of all Americans.

Invitational Priorities

Under 34 CFR 75.105(c)(1), the Secretary is particularly interested in applications that meet the following invitational priorities. However, under 34 CFR 75.105(c)(1) an application that meets these invitational priorities does not receive competitive or absolute preference over other applications.

Projects that propose—

(a) Assessment and evaluation activities including development of qualitative and quantitative tools that measure the attainment or enhancement of job-specific basic skills and other workplace outcomes as increased employee-readiness for promotions, decreased error rates and reductions in waste, turnover, lost management time and downtime. The Department respects the proprietary nature of the kinds of workplace data collected and is seeking data only on participant gains and not access to raw data;

(b) In the case of previously funded grantees, activities that (in addition to "normal" literacy services) develop, validate, refine, reproduce, and disseminate basic skills curricula that—

(1) Are based on an analysis of literacy skills required for job competencies;

(2) Simplify job-based materials to create a systematic curriculum that brings workers to the level of basic

skills competency required for a current or future job; and

(3) May be transferrable to businesses or industries of a similar type or size (such as garment manufacturing or small businesses).

(c) A plan of operation that, consistent with the principles of high productivity work environments, demonstrates new methods of involving workers, whether union or non-union, in all aspects of program development, including project design, job task analysis, curriculum development, governance, recruitment, instruction, peer support, and evaluation that is integrated with team-based management or cross-training approaches used in the workplace.

Selection Criteria

The Secretary uses the following selection criteria to evaluate applications for new grants under this competition.

The maximum score for all of these criteria is 105 points, including the 5 points associated with the additional factor of small business involvement. The maximum score for each criterion is indicated in parentheses.

The Secretary assigns the 15 points reserved in 34 CFR 472.21(b) as follows: 5 points to the selection criterion (a)—Program factors—in 34 CFR 472.22(a) for a total of 20 points for that criterion; 5 points to the selection criterion (d)—Plan of operation—in 34 CFR 472.22(d) for a total of 17 points for that criterion; and 5 points to the selection criterion (f)—Evaluation plan—in 34 CFR 472.22(f) for a total of 15 points for that criterion.

(a) *Program factors.* (20 points) The Secretary reviews each application to determine the extent to which the project—

(1) Demonstrates a strong relationship between skills taught and the literacy requirements of actual jobs, especially the increased skill requirements of the changing workplace;

(2) Is targeted to adults with inadequate skills for whom the training described is expected to mean new employment, continued employment, career advancement, or increased productivity;

(3) Includes support services, based on cooperative relationships within the partnership and from helping organizations, necessary to reduce barriers to participation by adult workers. Support services could include educational counseling, transportation, and child care during non-working hours while adult workers are participating in a project; and

(4) Demonstrates the active commitment of all partners to accomplishing project goals.

(b) *Extent of need for the project.* (15 points) The Secretary reviews each application to determine the extent to which the project meets specific needs, including consideration of—

(1) The extent to which the project will focus on demonstrated needs for workplace literacy training of adult workers;

(2) The adequacy of the applicant's documentation of the needs to be addressed by the project;

(3) How those needs will be met by the project; and

(4) The benefits to adult workers and their industries that will result from meeting those needs.

(c) *Quality of training.* (15 points) The Secretary reviews each application to determine the quality of the training to be provided by the project, including the extent to which the project will—

(1) Use curriculum materials that are designed for adults and that reflect the needs of the workplace;

(2) Use individualized educational plans developed jointly by instructors and adult learners;

(3) Take place in a readily accessible environment conducive to adult learning; and

(4) Provide training through the partner classified under 34 CFR 472.2(a)(2), unless transferring this activity to the partner classified under 34 CFR 472.2(a)(1) is necessary and reasonable within the framework of the project.

(d) *Plan of operation.* (17 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the project design, especially the establishment of measurable objectives for the project that are based on the project's overall goals;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project, and includes—

(i) A description of the respective roles of each member of the partnership in carrying out the plan;

(ii) A description of the activities to be carried out by any contractors under the plan;

(iii) A description of the respective roles, including any cash or in-kind contributions, of helping organizations; and

(iv) A description of the respective roles of any sites;

(3) How well the objectives of the project relate to the purposes of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants, who are otherwise eligible to participate, are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(e) *Applicant's experience and quality of key personnel.* (10 points).

(1) The Secretary reviews each application to determine the extent of the applicant's experience in providing literacy services to working adults.

(2) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project including—

(i) The qualifications, in relation to project requirements, of the project director, if one is to be used;

(ii) The qualifications, in relation to project requirements, of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (e)(2) (i) and (ii) above will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(3) To determine personnel qualifications under paragraphs (e)(2 (i) and (ii) above, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project;

(ii) Experience and training in project management; and

(iii) Any other qualifications that pertain to the quality of the project.

(f) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are clearly explained and appropriate to the project;

(2) To the extent possible, are objective and produce data that are quantifiable;

(3) Identify expected outcomes of the participants and how those outcomes will be measured;

(4) Include evaluation of effects on job advancement, job performance (including, for example, such elements as productivity, safety and attendance), and job retention; and

(5) Are systematic throughout the project period and provide data that can be used by the project on an ongoing basis for program improvement.

(g) *Budget and cost-effectiveness.* (8 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project;

(2) Costs are reasonable and necessary in relation to the objectives of the project; and

(3) The applicant has minimized the purchase of equipment and supplies in order to devote a maximum amount of resources to instructional services.

Additional Factor

The Secretary assigns 5 points to applications that include small businesses. To qualify for the 5 points, an applicant must certify which of the enterprises included in the partnership is a small business under the Small Business Size Standards; Final and Interim Final Rules (13 CFR part 121), published in the **Federal Register** (Vol. 54, No. 249, pages 52648–52658), and make explicit in the certification the four-digit Standard Industrial Classification (SIC) code in the Final and Interim Final Rules within which each such enterprise classifies itself.

(Authority: 20 U.S.C. 1211(a))

In making awards under this program, the Secretary may consider, in addition to the selection criteria, whether funding a particular applicant would improve the geographical distribution of projects funded under this program.

(Authority: 20 U.S.C 1211(a))

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on April 2, 1992 (57 FR 11354).

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, Executive Order 12372–CFDA #84.198, U.S. Department of Education, room 4181, 400 Maryland Avenue, SW., Washington, DC 20202–0125.

Proof of mailing will be determined on the same basis as applications (see CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

Please Note That the Above Address is not the Same Address as the One to Which the Applicant Submits its Completed Application. Do not Send Applications to the Above Address.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and SIX copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.198), Washington, DC 20202–4725.

or

(2) Hand deliver the original and six copies of the application by 4:30 p.m. (Washington, D.C. time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.198), room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a date postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 732–2495.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number of the competition under which the application is being submitted.

Application Instructions and Forms

To apply for an award under this program competition, your application must be organized in the following order and include the following six parts:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and Instructions.

Part II: Partners' Agreement Form.

Part III: Budget Information and Instructions.

Part IV: Budget Narrative.

Part V: Program Narrative.

Part VI: Additional Assurances and Certification:

a. Assurances—Non-Construction Programs (Standard Form 424B).

b. Certifications Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED form 80–0013) and Instructions.

c. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form 80–0014) and Instructions.

Note: Ed Form 80–0014 is intended for the use of grantees and should not be transmitted to the Department.

d. Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and Instructions, and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL–A).

All forms and instructions are included as appendix A of this notice. Questions and answers pertaining to this program are included, as appendix B, to assist potential applicants.

An applicant may submit information on a photostatic copy of the forms in appendix A. However, each of the pertinent documents must include an original ink signature. All applicants must submit ONE original signed application, including ink signatures on all forms and assurances and SIX copies of the application. Please mark each application as original or copy. Local or State agencies may choose to submit two copies with the original.

No grant may be awarded unless a complete application form has been received.

(20 U.S.C. 1241–1391)

FOR FURTHER INFORMATION CONTACT: Jeanne Williams, Special Programs Branch, Division of National Programs, Office of Vocational and Adult Education, U.S. Department of Education, room 4512–MES, 400 Maryland Avenue SW., Washington, DC 20202–7242. Telephone (202) 732–1838. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 1211(a).

Dated: May 28, 1992.

Betsy Brand,

Assistant Secretary, Office of Vocational and Adult Education.

Appendix A—

BILLING CODE 4000-01-M

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION:

Application	Preapplication
☐ Construction	☐ Construction
☒ Non-Construction	☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☒ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

9. NAME OF FEDERAL AGENCY:

U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 1 9 8

TITLE: National Workplace Literacy Program

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT:

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

PART II - PARTNERSHIP AGREEMENT FORM

INSTRUCTIONS: Partners must submit a signed Partners' Agreement form and enclose it with the application. Under 34 CFR 472.2 it is essential that the partners sign and submit this document in order for their application to be considered complete. If the document is not signed by all partners and submitted with the application, the Secretary will return the application without further consideration for funding pursuant to 34 CFR 75.216.

Please note that every partnership must include at least one entity from each of the following two categories and may, but need not, include more than one entity from each category. Category 1 includes a business, industry, or labor organization, or private industry council. Category 2 includes a State educational agency, local educational agency, or school (including an area vocational school, and employment and training agency, or a community-based organization). This means that the Partnership Agreement must be signed by at least one Category 1 partner and at least one Category 2 partner and must also be signed by any other partner(s) included in the partnership. Any questions about forming a valid partnership and properly completing the Partnership Agreement may be referred to one of the program officers listed as an information contact in this application notice.

Partners' Agreement

As authorized representatives of our organizations, we agree on their behalf to the following terms with respect to our application number V198A_____ as a condition of applying for and receiving a grant from the National Workplace Literacy Program. We:

- designate partner _____ as the applicant on behalf of the partnership;
- are willing to be partners in this project;
- will perform the role detailed for each of us in the application;
- will be bound by every statement and assurance made in the application including, but not limited to, the assurance that any funds provided to the partnership under Section 371 of Public Law 100-297 will be used to supplement and not supplant funds otherwise available for the purposes of the National Workplace Literacy Program.

Category One Partner	Category Two Partner
_____	_____
Original Ink Signature	Original Ink Signature
_____	_____
Name (Typed)	Name (Typed)
_____	_____
Title (Typed)	Title (Typed)
_____	_____
Organization (Typed)	Organization (Typed)
_____	_____
Date (Typed)	Date (Typed)
_____	_____

Note: Applicant must add signature spaces including the above information for any additional partner(s).

INSTRUCTIONS FOR PART II--PARTNERS' AGREEMENT FORM

Partners must submit a signed Partners' Agreement Form and enclose it with the application. Under 34 CFR 472.2, it is essential that the partners sign and submit this document in order for their application to be considered complete. Any reference in the application to an organization as a partner in the project is considered to mean a bona fide partner in the partnership. If the document is not signed by all organizations identified as partners and submitted with the application, the Secretary will return the application without further consideration for funding pursuant to 34 CFR 75.216

PART III - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	A	B	C
1. Personnel			
2. Fringe Benefits (Rate %)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Costs/Stipends			
11. TOTAL, Federal Funds Requested (lines 8 through 10)			

SECTION B - Cost Sharing Summary (if appropriate)

	A	B	C
1. Cash Contribution			
2. In-Kind Contribution (only costs specifically for this project)			
3. TOTAL, Cost Sharing (Rate %)			

NOTE: For FULLY-FUNDED PROJECTS use Column A to record the entire project budget period.

For MULTI-YEAR PROJECTS use Column A to record the first 12-month budget period; Column B to record the second 12-month budget period; and Column C to record the third 12-month budget period.

INSTRUCTIONS FOR PART III - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. Personnel: Show salaries to be paid to project personnel.

2. Fringe Benefits: Indicate the rate and amount of fringe benefits.

3. Travel: Indicate the amount requested for both inter- and intra-State travel of project staff. Include funds for two trips for two people to attend a project director's meeting in Washington, D.C.

4. Equipment: Indicate the cost of non-expendable personnel property that has a useful life of more than one year and a cost of $300 or more per unit ($5,000 or more if State, Local, or Tribal Government).

5. Supplies: Include the cost of consumable supplies and materials to be used during the project.

6. Contractual: Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment): and (2) sub-contracts.

7. Other: Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.

8. Total, Direct Cost: Show the total for lines 1 through 7.

9. Indirect Costs: Indicate the rate and amount of indirect costs. NOTE: For training grants, the indirect cost rate cannot exceed 8%.

10. Training/Stipend Cost: (not allowable)

11. TOTAL, Federal Funds Requested: Show total for lines 8 through 10.

SECTION B - Cost Sharing Summary

Indicate the actual rate and amount of cost sharing when there is a cost sharing requirement. If cost sharing is required by program regulations, the local share required refers to a percentage of TOTAL PROJECT COST, not of Federal funds.

BILLING CODE 4000-01-C

Part IV—Instructions for Budget Narrative

Prepare a detailed Budget Narrative that justifies, and/or clarifies the budget figures shown in sections A and B. (Please note that the National Literacy Act of 1991 (Pub. L. 102–73 as amended) amends the Adult Education Act (Pub. L. 100–297) to permit any eligible organization to use 100 percent Federal funds for administrative costs incurred in establishing a project during a start-up period, not to exceed 90 days.) Explain:

1. The basis used to estimate certain costs (professional personnel, consultants, travel, indirect costs) and any other cost that may appear unusual;
2. How the major cost items relate to the proposed project activities;
3. The costs of the project's evaluation component;
4. What matching occurs in each budget category; and
5. For any organization claiming 100 percent Federal funding for administrative costs incurred in establishing a project during a start-up period, not to exceed 90 days, provide a breakdown of expenditures in the start-up period, and in the subsequent operational period.

Instructions for Part V—Application Narrative

Before preparing the Application Narrative, an applicant should read carefully the description of the program, the information regarding the invitational priority, and the selection criteria the Secretary uses to evaluate applications.

The narrative should encompass each function or activity for which funds are being requested and should—

1. Begin with a Abstract; that is, a summary of the proposed project:
2. Describe the proposed project in light of each of the selection criteria in the order in which the criteria are listed in this application package; and
3. Include any other pertinent information that might assist the Secretary in reviewing the application.

The Secretary strongly requests the applicant to limit the Application Narrative to no more than 25 double-spaced, typed, 8½" × 11" pages (on one side only), although the Secretary will consider applications of greater length. Be sure that each page of your application is numbered consecutively.

Include as an appendix to the Application Narrative supporting documentation, also on 8½" × 11" paper (e.g., letters of support, footnotes, résumés, etc.) or any other pertinent information that might assist the Secretary in reviewing the application.

Applicants are advised that—

(1) Under 34 CFR 75.217 of the Education Department General Administrative Regulations (EDGAR), the Department considers only information contained in the application in ranking applications for funding consideration. Letters of support sent separately from the formal application package are not considered in the review by the technical review panels.

(2) In reviewing applications, the technical review panel evaluates each application solely on the basis of the established technical review criteria. Letters of support contained in the application will strengthen the application only if they contain commitments that pertain to the established technical review criteria, such as commitment of resources and placement of successful completers.

Include any other pertinent information that might assist the Secretary in reviewing the application under the Adult Education Act, as amended by Title II, Part B of Public Law 102–103.

Instructions for Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project, OMB 1830–0512, Washington, DC 20503. (Information collection approved under OMB control number 1830–0512. Expiration date 1/31/93.)

BILLING CODE 4000–01–M

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 --

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 --

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about--

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will--

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 —

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013, 6/90 (Replaces ED 80-0008, 12/89; ED Form GCS-008, (REV. 12/88); ED 80-0010, 5/90; and ED 80-0011, 5/90, which are obsolete)

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change For Material Change Only: year _____ quarter ____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: Congressional District, *if known*:	Congressional District, *if known*:
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	9. Award Amount, *if known*: $
10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI)*:	b. Individuals Performing Services *(including address if different from No. 10a)* *(last name, first name, MI)*:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply)*:	13. Type of Payment *(check all that apply)*:
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment *(check all that apply)*: ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____

Print Name: _____

Title: _____

Telephone No.: _____ Date: _____

Federal Use Only:

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Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

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Standard Form - LLL-A

Appendix B—

Potential applicants frequently direct questions to officials of the Department regarding application notices and programmatic and administrative regulations governing various direct grant programs. To assist potential applicants the Department has assembled the following most commonly asked questions.

Q. Can we get an extension of the deadline?

A. No. A closing date may be changed only under extraordinary circumstances. Any change must be announced in the **Federal Register** and apply to all applications. Waivers for individual applications cannot be granted, regardless of the circumstances.

Q. We just missed the deadline for a previous Department of Education competition. May we submit the application we prepared for it under this competition?

A. Yes. However, the likelihood of success is not good. A properly prepared application must meet the specifications of the competition to which it is submitted.

Q. I'm not sure which competition is most appropriate for my project. What should I do?

A. We are happy to discuss any questions with you and provide clarification on the unique elements of the various competitions.

Q. How can I best ensure that my application is received on time and is considered under the correct competition?

A. Applicants should carefully follow the instructions for filing applications that are set forth in this notice. Be sure to clearly indicate in Block 10 of the face page of their application (Standard form 424) the CFDA number 84.198, and the title of the program—National Workplace Literacy Program—representing the competition in which the application should be considered.

Q. Will you help us prepare our application?

A. We are happy to provide general program information. Clearly, it would not be appropriate for staff to participate in the actual writing of an application, but we can respond to specific questions about application requirements, evaluation criteria, and the priority. Applicants should understand that this previous contact is not required, nor will it in any way influence the success of an application.

Q. How long should an application be?

A. The Department of Education is making a concerted effort to reduce the volume of paperwork in discretionary program applications. However, the scope and complexity of projects is too variable to establish firm limits on length. Your application should provide enough information to allow the review panel to evaluate the significance of the project against the criteria of the competition. We recommend that you address all of the selection criteria in an "Application Narrative" of no more than 25 pages in length. Supporting documentation may be included in appendices to the Application Narrative. Some examples:

(1) Staff qualifications. These should be brief. They should include the person's title and role in the proposed project and contain only information about his or her qualifications that are relevant to the proposed project. Qualifications of consultants should be provided and be similarly brief. Resumes may be included in the appendices.

(2) Copies of evaluation instruments proposed to be used in the project in instances where such instruments are not in general use.

Note that a Budget Narrative describing specific uses of funds requested in the budget form also is required. No applications will be funded without this material. The Budget Narrative is not included in the 25 pages recommended. It may consist of two of three additional pages.

Q. How should my application be organized?

A. The Secretary strongly requests that the applications be assembled with the SF 424 on top, followed by the abstract, Partners' Agreement Form, table of contents, SF 424A budget forms, Application Narrative, assurances and certifications, and appendices. Do not substitute your own cover for the SF 424. Please include one extra, loose copy of the SF 424 for use by the Application Control Center. Please number all pages. The Application Narrative should be organized to follow the exact sequence of the components in the selection criteria in this notice.

Q. Is travel allowable using project funds?

A. Travel associated with carrying out the project is allowed if necessary and reasonable. The Secretary anticipates that the project director and one business or labor representative may be asked to attend two staff developmental meetings. Therefore, you may wish to include the costs of four trips to Washington, DC in the travel budget.

Q. How can I ensure that my application is filed on behalf of a validly formed partnership?

A. The requirements for forming a partnership and filing an application on its behalf are explained in 34 CFR 472.2 of the program regulations. A partnership requires a signed agreement between at least one entity described in 34 CFR 472.2(a)(1) and at least one entity described in 34 CFR 472.2(a)(2). Note that State and local governments—like any other entities—may not qualify as partners unless they fall within these descriptions. For example, under the regulations a State or local educational agency or a municipal employment and training agency is an eligible partner, but a State or city as such is not an eligible partner. No agency of the Federal government is an eligible partner. Federal employees including members of the armed services are not eligible for training. If you are not sure whether a particular entity is an eligible partner, please call one of the program officers listed as an information contact in the application notice.

Q. Can entities that are not eligible partners be involved in a workplace literacy project?

A. Yes. They could potentially be involved as "contractors," "helping organizations," or "sites," as defined in 34 CFR 472.5 of the regulations. Note that entities that are "helpers" or "sites" may not receive funds from the grant.

Q. Must the signed partnership agreement be submitted with the application?

A. Yes. The agreement is required both to establish the partnership's legal eligibility and to ensure each partner's continuing commitment during the workplace literacy project. Prior to submitting an application, partners should ensure that each partner clearly understands its role and responsibilities in the project.

The Department interprets even a single reference in the application to an organization as a partner to mean that it is a bona fide partner in the partnership and, thus, is required to sign the partnership agreement. The applicant should be careful to designate partners, helpers, contractors, etc. in the same way wherever they are mentioned throughout the application. Because partnership requirements are established by law, the Department reviews each agreement form to be certain that it meets the terms of the law requiring all entities named as partners to sign the agreement. The Department wishes to underscore that if any of the entities named as partners in the application have not signed the agreement form, the application will be returned to the applicant without further consideration for funding.

Q. What is meant by a required percent of non-Federal matching funds?

A. In this program, the recipient of Federal funds is required to "match" the Federal grant by paying at least a minimum percentage of total program costs. Total program costs include both the Federal funds received and the non-Federal contribution. For example, a partnership that is required to pay 30 percent of total program costs would have to contribute $30,000 to match a Federal award of $70,000 ($30,000=30 percent of $100,000 ($30,000 plus $70,000)). All partnerships must contribute at least 30 percent of total program costs, except that partnerships may receive full reimbursement for their necessary and reasonable administrative costs incurred in establishing a project during the project start-up period. That period may not exceed 90 days, at which time the project is expected to provide services to adult workers.

Q. What costs may be included in the 30 percent match (cash or in-kind)?

A. Any cost that can be paid with Federal funds from this program is allowable as match (see Education Department General Administrative Regulations, 34 CFR 74.50–74.57 and 34 CFR 80.24).

Q. What costs are not allowed using project funds (Federal or non-Federal match)?

A. The following items are not allowable costs in the National Workplace Literacy Program:

- Life skills such as balancing a checkbook, learning to read to children, writing personal correspondence, etc.
- Personal counseling such as counseling for alcoholism, mental health, health, domestic problems, or housing issues.
- Job skills or vocational training such as direct training in Statistical Process Control rather than literacy skills needed for SPC.
- Computer literacy, defined as any training above the level of computer competence needed to operate a computer-assisted program of instruction used in a WPL project. Nonallowable costs include teaching of word processing, Wordperfect, Lotus, dBase, etc.
- Stipends or tuition payments.
- Training of supervisors, other than those one step up from targeted workers such as maintenance crew supervisors.
- Construction costs.
- Institutional allowance.
- Planning and executing national conferences.
- Any unreasonable or unnecessary cost.

Q. May a project provide vocational or job training activities?

A. No. Projects must provide adult education programs that teach literacy skills needed in the workplace. Workplace literacy activities include only the adult education activities listed in the Description of Program section of the Notice Inviting Applications. This list does not include vocational or job training activities such as auto mechanics, dye casting, tailoring, and statistical process control. Workplace literacy instructions, however, may enable individuals to benefit subsequently or simultaneously from advanced vocational skills training. For example, this program could support classes in math skills necessary for statistical process control but not a program of statistical process control training itself. If you are not sure whether a particular activity is eligible under this program, please call one of the program officers listed as an information contact in the application notice.

Q. May a project provide training in operating a computer?

A. Training to operate a computer that is part of the performance of a job is a form of vocational or job training and is not an eligible activity under this program. However, computers could be used as a means of instruction if this were necessary and reasonable under the circumstances of a particular project. In such a context, it would be permissible to ensure that students possessed those rudimentary skills that are necessary to interact with computer-assisted literacy instruction.

Q. How many copies of the application should I submit and must they be bound?

A. The original application should be bound and clearly marked as the original application bearing the original signatures. In addition six copies should be submitted and marked as copies. Applications should not include foldouts, photographs, audio-visuals, or other materials that are hard to duplicate.

Q. When will I find out if I'm going to be funded?

A. You can expect to receive notification within 8 to 9 months of the application closing date, depending on the number of applications received and the number of competitions with closing dates at about the same time.

Q. Will my application be returned?

A. We do not return original copies of applications. Thus, applicants should retain at least one copy of the application.

Q. What happens during negotiations?

A. During negotiations technical and budget issues may be raised. These are issues that have been identified during panel and staff reviews that require clarification. Sometimes issues are stated as "conditions." These are issues that have been identified as so critical that the award cannot be made unless those conditions are met. Questions may also be raised about the proposed budget. Generally, these issues are raised because there is inadequate justification or explanation of a particular budget item, or because the budget item seems unimportant to the successful completion of the project. If you are asked to make changes that you feel could seriously affect the project's success, you may provide reasons for not making the changes or provide alternative suggestions. Similarly, if proposed budget reductions will, in your opinion, seriously affect the project activities, you may explain why and provide additional justification for the proposed expenses. An award cannot be made until all negotiation issues have been resolved.

Q. Where can copies of the Federal Register, program regulations, and Federal statutes be obtained?

A. Copies of these materials can usually be found at your local library. If not, they can be obtained from the Government Printing Office by writing to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Telephone: (202) 783–3238. When requesting copies of regulations or statutes, it is helpful to use the specific name, public law number, or part number. The materials referenced in this notice should be referred to as follows:

(1) The Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, Pub. L. 100–297, Title III, sections 301–385.

(2) The Education Department General Administrative Regulations (EDGAR) (34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86).

(3) 34 CFR part 472 (National Workplace Literacy Program), as published elsewhere in this issue of the Federal Register.

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federal register

Friday
June 5, 1992

Part V

Environmental Protection Agency

Draft Report: A Cross-Species Scaling Factor for Carcinogen Risk Assessment Based on Equivalence of mg/kg$^{3/4}$/Day; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4139-7]

Draft Report: A Cross-Species Scaling Factor for Carcinogen Risk Assessment Based on Equivalence of mg/kg$^{3/4}$/Day

AGENCY: U.S. Environmental Protection Agency.

ACTION: Request for comments on the draft report: A Cross-Species Scaling Factor for Carcinogen Risk Assessment Based on Equivalence of mg/kg$^{3/4}$/day.

SUMMARY: Three Federal regulatory agencies, the Environmental Protection Agency, the Food and Drug Administration, and the Consumer Product Safety Commission, are today asking for public comments on the draft report: A Cross-Species Scaling Factor for Carcinogen Risk Assessment Based on Equivalence of mg/kg$^{3/4}$/day.

The report is intended to serve as the basis for a common and unified science policy among these three agencies on a default methodology for determining equivalence of doses—to be used when existing agent-specific data are insufficient for a case-by-case determination—when extrapolating results of rodent carcinogen bioassays to humans.

The public is invited to comment, and public comments will be considered in final revision of the report and in the final adoption of science policies by the participating agencies on cross-species extrapolation of equivalent doses in assessing potential human risks from putative chemical carcinogens.

Commenters are asked to focus on the report's discussion of several issues: (1) The bearing of empirical data on carcinogenic potencies in experimental animals and in humans to the appropriate choice of a dose-scaling methodology; (2) the use of allometric scaling as a means for suggesting appropriate dose scaling methods; (3) the appropriate use of pharmacokinetic and other data in defining a default methodology and particularly in supplanting such default assumptions with case-specific, data-based analysis of dose equivalence; (4) distinguishing the contributions of pharmacokinetic and pharmacodynamic factors to species differences in a carcinogen's potency; and (5) the advisability of adopting the proposed dose-scaling methodology as a common default methodology for the participating agencies.

The complete text of the draft report is published as the last section of this notice.

DATES: The draft document is being made available for public review and comment until August 4, 1992. Comments must be in writing and must be postmarked by August 4, 1992.

INSPECTION AND COPYING: This notice, references, supporting documents, and other relevant materials are available for inspection and copying from the ORD Public Information Shelf at the EPA Headquarters Library, 401 M Street, SW., Washington, DC, Telephone: (202) 260–5926 or FTS: 260–5926. The Library is open daily between the hours of 8 a.m. and 5:30 p.m., except weekends and holidays.

ADDRESSES: Comments may be mailed or delivered to: Project Officer for Cross-Species Scaling Factor Report, c/o Technical Information Staff, Office of Health and Environmental Assessment, U.S. EPA (RD–689), 401 M Street, SW. (room 3703), Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Dr. Lorenz Rhomberg, Human Health Assessment Group, Office of Health and Environmental Assessment, U.S. EPA (RD–689), Washington, DC 20460, Telephone: (202) 260–5723 or FTS: 260–5723.

SUPPLEMENTARY INFORMATION: This document reports a consensus reached by representatives of the U.S. Environmental Protection Agency (EPA), the Food and Drug Administration (FDA), and the Consumer Product Safety Commission (CPSC) in discussions conducted under the auspices of the Interagency Pharmacokinetics Group, a workgroup of Federal scientists dealing with issues of common interest arising in the application of pharmacokinetics to chemical health risk assessment. The report is a product of the Interagency Pharmacokinetics Group. It comprises an analysis of empirical and theoretical aspects of the cross-species dose-scaling question, together with an argument for adopting the method of scaling daily administered doses by body mass raised to the ¾ power to achieve presumed equivalence in lifetime carcinogenic risk in different mammalian species. These recommendations have been reviewed and endorsed by the EPA, the FDA, and the CPSC.

If such a policy is adopted, it would replace the current practices in carcinogenic risk assessment of scaling daily administered amounts by body mass (as at FDA) or by body surface area (as at EPA and CPSC). The consensus recognizes that there is considerable scientific uncertainty around any scaling method; it does not claim to have overturned these previous methods with one of superior scientific validity or reduced uncertainty. Rather, in view of the benefits of having the major practitioners of carcinogen risk assessment in the Federal government adhere to a single, consistent methodology, the proposal provides a common default procedure to encourage consistent analyses in cases where agent-specific information is insufficient to suggest appropriate dose-equivalencies on a case-by-case basis. Such case-specific information is always to be preferred to the default methodology proposed herein, and its development and appropriate use are encouraged. Since the scaling methodologies in current use by the agencies participating in this proposal are within the span of scientific uncertainty surrounding the cross-species scaling question, it is not proposed to retroactively change or adjust any risk assessments completed under current policies.

This document has undergone a preliminary interagency review under the auspices of the Ad Hoc Working Group on Risk Assessment of the Federal Coordinating Council for Science, Engineering, and Technology (FCCSET). This request for public comment and a concurrent external scientific peer review will contribute to the development of a final report on this topic. This final report of the Interagency Pharmacokinetics Group will provide the basis for a recommendation of a uniform, default science policy on interspecies scaling for carcinogen risk assessment, to be endorsed by the FCCSET Working Group and used by a broad segment of Federal agencies.

Dated: May 22, 1992.

F. Henry Habicht II,

Deputy Administrator.

Contents

A Cross-Species Scaling Factor for Carcinogen Risk Assessment Based on Equivalence of mg/kg$^{3/4}$/Day

I. Introduction

As a matter of necessity, the potential for a chemical agent to cause toxic reactions in humans is often

investigated by exposing and observing the reactions of experimental animals, usually rats and mice. This practice rests on the high degree of physiological, biochemical, and anatomical similarity among mammalian species; the biological reactions in the experimental animals may be taken as evidence that humans might show similar responses to the same chemical exposures. When the objective is to use the animal data to predict the degree or probability of response in humans—that is, when the aim is quantitative extrapolation—one must define the dose levels for humans and animals that are expected to produce the same degree of effect. For this, it is necessary to take into account the pronounced difference in *scale* between the tested model organisms and humans. That is, even if fundamental similarity is presumed, one must allow for the fact that humans are much larger than experimental rodents and will experience chronic exposure to a toxicant for a longer lifetime.

Defining such "toxicologically equivalent" doses has been problematic. Alternatives that have found use include scaling daily administered amounts by body weight or by body surface area; scaling cumulative lifetime intake by body weight; equating exposures to contaminated air, food, or water according to the concentration of toxic agent; and others. Despite considerable study and debate (Pinkel, 1958; Freireich et al., 1966; Mantel and Schneiderman, 1975; Rall, 1977; Hoel, 1977; Hogan and Hoel, 1982; Calabrese, 1983, 1987; Crump et al., 1985; Davidson et al., 1986; Gillette, 1987; Vocci and Farber, 1988; Hill et al., 1986), no alternative has emerged as clearly preferable, either on empirical or theoretical grounds. The various Federal agencies conducting chemical risk assessments have developed their own preferences and precedents for cross-species scaling methodology. This variation stands among the chief causes of variation among estimates of a chemical's potential human risk, even when assessments are based on the same data.

The variety of cross-species scaling methods in use correctly reflects the uncertainty about the best procedure, but the resulting disagreement in risk estimates results in some awkwardness in the regulatory arena. Increasingly, regulatory procedures are being mandated that establish decision points contingent on whether a certain human risk level is to be expected according to "generally accepted" risk assessment procedures. Variation in methodology frequently leads to ambiguity as to whether regulatory action should take place. It has therefore become important to resolve differences in cross-species scaling assumptions.

A second impetus for reexamining the scaling question comes from the increasing availability of comparative pharmacokinetic information on toxic agents. Pharmacokinetic analysis uses data on absorption of agents into the body, distribution among the tissues, metabolic activation or detoxification, and elimination to develop a picture of the disposition of a dose by the body and consequent exposure of the actual target tissues of toxic action. Pharmacokinetic differences among species clearly contribute to the magnitude of equipotent doses. However, the appropriate use of such information for the dose equivalency question hinges on resolving the role of pharmacokinetics compared to that of species differences in the magnitude of toxic reaction to a given degree of target-tissue exposure (i.e., "pharmacodynamics"). Distinguishing the roles of these two aspects of potency scaling has been hampered by imprecisely articulated rationales for the various methods.

In view of the above considerations, the Federal agencies with primary responsibility for conducting chemical risk assessments have endeavored to define a uniform cross-species scaling methodology and rationale for use when extrapolating results of rodent carcinogen bioassays to humans. Discussions and debate on the issues have been held under the auspices of the Interagency Pharmacokinetics Group (IPG), an ongoing workgroup of Federal scientists that deals with issues of common interest arising in the application of pharmacokinetics to risk assessment. The present report is a product of the Interagency Pharmacokinetics Group, and represents a statement of the consensus recommendation resulting from these discussions.

The consensus is that, in the absence of adequate information on pharmacokinetic and sensitivity differences among species, doses of carcinogens should be expressed in terms of daily amount administered per unit of body mass raised to the ¾ power. Equal doses in these units (i.e., in $mg/kg^{3/4}/day$), when experienced daily for a full lifetime, are presumed to produce equal lifetime cancer risks across mammalian species. This proposed scaling method has the advantage of being intermediate between the two currently used methods (scaling daily amount by body mass or by body surface area). It is not merely a compromise; it is as well supported by the empirical data on carcinogen potencies in animals and humans as the methods it would replace. It also has an explicit rationale (the concept of species-independent "physiological time") that may be derived from principles of interspecific allometric variation in anatomy, physiology, and pharmacokinetics. That is, it can be interpreted as a correction for readily observable scale differences among species as their essentially similar biology varies in a regular quantitative way as a function of size.

The consensus does not pretend to have solved the underlying scientific issues. Former methodologies have not been shown to be in error; the consensus should not be construed as overturning previous assumptions and replacing them with one of superior scientific validity. Rather, the consensus achieves the benefits of having all Federal risk assessments adhere to a single, consistent methodology that is in accord with current scientific knowledge on the scaling question. Moreover, the method corresponds to a fully articulated rationale with explicitly stated assumptions about the roles and interactions of various underlying determinants of carcinogenic potency. This aids in consistent and scientifically appropriate application. Furthermore, as information is gained on how the biology of carcinogenesis varies among species, it will be clearer how the arguments and previous presumptions should be modified to accommodate these new insights.

The balance of this document reviews the evidence and arguments that may be adduced to address the question of cross-species scaling of equally carcinogenic doses, and outlines the support for the recommended position of equipotent doses in terms of $mg/kg^{3/4}/day$.

II. Approaches to Choosing a Cross-Species Scaling Factor

There are two broad and complementary approaches to choosing a cross-species scaling factor. The first is empirical; one may seek cases in which human epidemiologic data allow a direct estimate of an agent's potency, and then investigate the success of various scaling methods in predicting that potency from animal data. The second approach is theoretical, and is grounded in the principles of allometry, which is the study of the regular variation in features of anatomy and physiology as a function of overall body size. The strategy for this second

approach is to develop a scientific rationale for a particular scaling factor by investigating the allometric variation of the biological features and processes that influence and underlie carcinogenic potency.

Clearly, in many cases there will be agent-specific ways in which humans and experimental animals differ in a nonsystematic fashion. These may include metabolic activation or detoxification, interaction with key receptors or target molecules, and others. Such factors create unpredictable deviation from the general pattern of scaling, and must be discovered and accounted for on a case-by-case basis. The factor proposed here is a *default* scaling factor, by which is meant one that is to be applied in the absence of adequate case-specific information. Lacking such information, one provisionally assumes that the agent in question is an example of a "typical" or "average" chemical that follows a general pattern of cross-species potency differences. This presumption may be modified as information becomes available, but the default assumptions still serve as the benchmark against which the new information is evaluated.

A. Empirical Approach

This approach attempts to find a factor value that is empirically successful in producing good estimates of potency in humans from data on potencies in other species. The underlying reason why such a factor works is a secondary consideration. The advantage of an empirical approach is that, by directly examining carcinogenic potencies (rather than influences on potency, such as pharmacokinetics), all relevant factors are included. The disadvantage is that the data are few and of low resolution. One must hope that the agent-specific factors, mentioned above, average out to give a good estimate of the general relationship.

A number of studies have sought general scaling factors empirically. Freireich et al. (1966), testing and extending the suggestion of Pinkel (1958), examined maximum tolerated doses (MTDs) of 18 antineoplastic drugs in mice, rats, hamsters, dogs, monkeys, and humans. LD_{10}s were used for rodents, and were presumed to be an equivalent level of toxicity to an MTD. Doses from experiments of different length were reexpressed in terms of an exposure regimen of 5 consecutive days, on the assumption that cumulative dose is proportional to effect. The authors concluded that, when doses were expressed as mg/m^2 body surface area/day, good predictions of human MTDs were obtained from all animal species, but that body weight scaling of doses overpredicted human MTDs (i.e., underpredicted potency in humans) by a margin that increased as one extrapolates from smaller and smaller species. Since an MTD is intended to be a dose causing no lethality, while an LD_{10} causes 10% lethality, the equivalence of these two end points can be questioned. Antineoplastic drugs typically have very steep dose-response curves, however, and survival near the MTD is maintained by close monitoring and intervention, which the rodent LD_{10} determination lack.

Collins et al. (1986, 1990) have found that the human MTD for 16 antineoplastic drugs is well predicted on average by the mouse LD_{10} when doses are expressed as mg/m^2 of body surface area. (If the MTD is considered to be a less severe end point, in such comparisons potencies in the larger species are overestimated vis-à-vis those in rodents; a bias would then be created that would increase the apparent success of surface area scaling compared to scaling by body weight.) That is, if these endpoints of acute toxicity are taken as equivalent, scaling doses in proportion to surface area tends to equalize toxicity across species. Moreover, Collins et al. (1990) compared the blood levels (in terms of the areas-under-the-curve of concentration in plasma as it declines over time, or "C x T") that correspond to equally toxic administered doses and found that these were an even better predictor, in that they displayed less case-by-case variation. These results illustrate three points that are returned to in Section B, below: (1) Scaling administered doses in this way tends to equalize blood levels across species; (2) areas-under-the-curve of blood concentration can serve as a predictive measure of the toxic response to a dose, even across species; and (3) obtaining pharmacokinetic data on internal dose measures can increase the precision of the cross-species prediction of equivalently toxic doses by accounting for case-by-case variation.

Travis and White (1988) reanalyzed the Freireich et al. (1966) data set and nearly doubled the number of drugs by adding a similar data set of Schein et al. (1979). Instead of simply examining the success of prevously proposed scaling methods, they used regression techniques empirically to determine the optimal power of body weight to achieve the best fitting allometric relationship of MTDs across species. For both data sets individually and for the combined data set, a power of 0.72 to 0.74 led to the best cross-species predictions. In the analysis of the combined data, a power of unity (body weight scaling) was clearly rejected at the 95% level of significance, and a power of 2/3 (surface area scaling) was barely rejected. The authors discuss the history of empirical studies of allometric variation in a number of physiological features, primarily basal metabolism, and arque that their result is part of a general empirical support for scaling by the 3/4 power of body weight.

The difficulty with applying these studies to the present question is that they address acute systemic toxicity of a rather narrowly defined type rather than carcinogenesis. Although dose-scaling for different toxic end points should have some features in common (notably pharmacokinetics), it is not altogether clear how lifelong risks that accumulate over time (such as cancer risk) should relate to short-term toxicity dependent only on immediate insults to target tissues.

Some empirical studies of comparative potencies of carcinogens in different species have been done. Such studies face the difficulty of precisely determining potencies in humans based on epidemiologic data. There is also some ambiguity in defining potencies in animals, owing to the variations in rout of exposure, sex and strain differences, varying experimental designs, and so on. Nonetheless, such studies represent the direct investigation of the question at hand.

The National Academy of Sciences (NAS, 1975) examined the potencies of six carcinogenic agents in bioassays using mice and rats and from human epidemiologic studies. They recommended as a dose measure cumulative lifetime amount of agent administered (in mg) per kg body weight. Such scaling is more "conservative" (i.e., predictive of higher human risk from animal results) than either surface area scaling or body weight scaling (from which it differs by a factor of 35, owing to the lack of adjustment for differences in length of lifetime). The NAS conclusion was not based on formal quantitative comparison with surface area scaling ($mg/kg^{2/3}/day$) or body weight scaling.

The paucity of carcinogen potencies in humans known directly from epidemiologic data limits the precision of such comparisons. Crouch and Wilson (1979) instead investigated dose scaling between rats and mice in about 70 ingestion cancer bioassays from the National Cancer Institute testing program. They measured potency by the parameter of a fitted one-hit dose-response model (in units of risk per mg/

kg/day), focusing on the tumor site/type producing the greatest potency (excluding testicular tumors in Fisher 344 rats, and skipping cases in which potency was less than twice sensitivity in either species). A geometric mean of potencies in each sex (which were highly correlated) was used. Interspecies comparisons were based on the best-fitting line of unit slope on a plot of the logarithm of potency in rats against the logarithm of potency in mice. The intercept of such a line gives the geometric mean of the factor by which the rat potency must be divided to give the mouse potency. Body weight scaling predicts a factor of one (i.e., equal risk per mg/kg/day in both species) while surface area scaling predicts a factor of about 2.1 to 2.3, depending on the exact body weights. (For comparison, the scaling by $mg/kg^{3/4}$/day, as advocated herein, predicts a ratio of about 1.8 or 1.9.) The results depend on the strain of rat used. In the 17 cases of comparison between Osborne-Mendel rats and B6C3F1 mice the mean ratio of potencies was 0.40; these rats were somewhat less sensitive than mice, contrary to the expectations of both scaling methodologies. When Fischer 344 rats were compared to the same mouse strain (18 cases) a mean ratio of 4.5 was obtained, indicating that rats were even more sensitive than surface area scaling would expect. (A geometric mean of these two ratios is 1.3. To attempt definition of a general mammalian cross-species allometric relationship using only two species is fraught with pitfalls, especially when they are as close in size as are rats and mice. Nonetheless, for the purposes of this discussion one may note that, using typical body weights—70 kg for a human, 40 g for a mouse, 467 g for a rat of unspecified strain, 500 g for an Osborne-Mendel rat, and 360 g for a Fischer rat—the ratio of 1.3 implies scaling by body weight to the 0.89 power.)

Crouch and Wilson (1979) also examined ratios of rodent potency to epidemiologically derived human potency, comparing "insofar as possible" studies with the same route of exposure and duration in fraction of a lifetime. Owing to imprecision in the epidemiologically based human estimates, no precise curve fitting was attempted, but the authors state that humans appear to be more sensitive to a mg/kg/day dose by about a factor of 5 compared to either rats or mice. (Using the typical body weights listed previously, a factor of 5 corresponds to scaling doses by a power of body weight of 0.7 and 0.8 based on the rat and mouse results, respectively.)

A similar comparison of rats and mice, based on an expanded base of 187 NCI bioassays, was conducted by Crouch (1983). (Despite the larger original database, there were only a few more chemicals in the final analysis, apparently owing to more stringent requirements for significance of portency estimates.) Again, the rat strain influenced the results: for Osborne-Mendel rats the mean ratio was 0.63 while for Fischer 344 rats it was 2.29. (A geometric mean of these two ratios is 1.20.) Separate analysis of males and females changed these ratios only slightly. An analysis irrespective of rat strain yielded a ratio of 1.62. (Using the typical body weights listed previously, rations of 1.20 and 1.62 imply scaling by body weight to the 0.92 and 0.80 power, respectively.)

Gaylor and Chen (1986) examined data on rats, mice, and hamsters in the extensive database of Gold et al. (1984) on TD_{50}s, the dose (in mg/kg/day) leading to a halving of the actuarially adusted percentage of tumor-free animals at the end of a standard lifespan. The tumor site/type showing highest potency (i.e., lowest TD_{50}) was chosen to represent the species, and only agents with responses in both species were included. For 190 compounds administered in the diet, the geometric mean ratio of TD_{50}s in rats and mice was $0.455 = 1/2.20$. That is, rats were on average about 2.2-fold more sensitive. (Using the typical body weights listed previously, this corresponds to scaling by body weight to the 0.68 power.) Ratios for other routes of exposure varied somewhat, although based on much lower sample sizes than the ingestion results cited above. By gavage, 32 compounds had a mean ratio 1/1.32, in drinking water 10 compounds had a mean ratio of 1.45 (i.e., rats were less sensitive), and by inhalation 7 compounds had a mean ratio of 1/11.2 (i.e., rats were much more sensitive).

Chen and Gaylor (1987) investigated NCI/NTP cancer bioassays of compounds administered orally to rats and mice. They compared "virtually safe doses" (VSDs), defined as doses associated with a lifetime cancer risk of one in a million. These were determined by the method of Gaylor and Kodell (1980), i.e., a linear extrapolation was conducted from an upper bound on a fitted multistage model dose-response curve. Thus, both the rat and mouse VSDs are in some sense "upper bounds." Chemicals were included if judged by the NTP to be positive in at least one species, and when in only one, if there was at least a positive trend in the other species for the same tumor site/type. Unlike the studies mentioned above, Chen and Gaylor (1987) focused on Correspondence of VSDs at the *same* site and sex across species. VSDs were expressed in terms of concentration (parts per million [ppm]); as discussed further in the following section on allometry, since intakes of contaminated media (air, food, water) tend to be proportional to body surface area, the expectation from surface area scaling is that VSDs expressed in ppm would be about equal across species, while body weight scaling would expect a ratio of rat to mouse VSDs to be slightly greater than 2. Again, the results depend on the strain of rat used: For Fischer 344 rats the mean ratio is 1.15, for Osborne-Mendel rats it is 1.68, and for Sprague-Dawley rats it is 1.78. Ignoring rat strain gives a mean ratio of 1.27. These results are intermediate between the expectations of surface area and body weight scaling. For ease of comparison with other studies, one may convert these ratios from a ppm basis to a mg/kg/day basis using empirically based daily food and water consumption patterns in rats and mice (for food, 5% and 13% of body weight for rats and mice, respectively, and for water, 7.8% and 17% [U.S. EPA, 1984]). On a mg/kg/day basis, the rat:mouse VSD ratios are 0.44–0.53 for Fischer rats, 0.647–0.771 for Osborne-Mendel rats, and 0.69–0.82 for Sprague-Dawley rats. (The range reflects using rat:mouse ratios of water and food consumption, respectively, which differ slightly.) Using the typical body weights listed previously, and assuming a weight of 540g for Sprague-Dawley rats, these ratios correspond to scaling doses by body weight to the 0.63–0.71 power (when based on Fischer rats, which constituted most of the cases), 0.83–0.90 power (when based on Osborn-Mendel rats), and 0.86–0.92 (when based on Sprague-Dawley rats).

Metzger et al. (1989) expanded Crouch's (1983) earlier data set by including all 264 cases from the Gold et al. (1984) database in which a significant TD_{50} was obtained in an oral study of rats and mice (of any strain), i.e., including studies that were not in the NCI/NTP database. A best-fitting line of unit slope showed a TD_{50} ratio of 1.46 between mice and rats. This is intermediate between the ratio of 1.0 expected from body weight scaling and 2.5 from suface area scaling (using the authors' assumptions about body weights—this implies a power of body weight of 0.86).

A major study of animal-to-human extrapolation of cancer potencies was carried out by Allen et al. (1987), and reported on by Crump et al. (1987, 1989) and Allen et at. (1988). Twenty-three chemicals were identified that permitted quantitative evaluation of potency in humans and in animals. "Risk-Related Doses" (RRDs) were calculated, defined as the average daily dose per kg of body weight that would be expected to result in an extra cancer risk of 25% over a lifetime. Chemicals were included even if RRD estimates were "infinite" for one species, as happens when no carcinogenic effect is observed. Unlike the studies reviewed above, the Allen et al. (1987) study considered a large number of alternative ways of representing the potency in animals as well as various methods for extrapolating the resulting RRDs to humans. Alternative sets of "risk assessment assumptions" restricted the animal database according to various criteria of experimental design, route of exposure, and tumor type. Different levels of averaging results over experiments, sex, and species were tried. Finally, different methods for combining the multiple animal results on a given chemical into a single measure of its "potency in animals" were examined. This complexity allows an admirably comprehensive look at animal-to-human extrapolation, but it also makes manifest a problem that is latent in the other extrapolation studies: The performance of a scaling factor depends on how the animal potency is characterized. A factor that tends to overpredict human risk can be "rescued" by a method for characterzing animal potency that tends to produce a low estimate, and vice versa.

When the objective is to examine alternative dose-scaling factors, it would seem that the best approach is to examine analyses that aim at broadly based and unbiased estimates of the potency in animals. Risk assessment practices such as using upper bounds on dose-response curves and extrapolating from the most sensitive sex and species of animal are explicitly conservative; they may be appropriate science policies for regulatory purposes, but when the issue is empirically to choose a best-performing scaling factor, they introduce a bias, favoring a less conservative factor to compensate for their conservatism and restore a good prediction of the known human potency.

To compare potencies, Allen et al. (1987) fit a line of unit slope to the data of epidemiologically observed log RRD in humans plotted against the predicted human log RRD based on the animal data and the chosen scaling methodology. The intercept of this line gives an average ratio of the observed to predicted potency, with a ratio of unity indicating unbiased prediction. The analyses discussed prominently in the Allen et al. (1987, 1988) and Crump et al. (1987, 1989) reports show that body weight scaling leads to a ratio of approximately one to somewhat less than one depending on the particular suite of risk assessment assumptions chosen (i.e. slightly underpredicting human risk), while surface area scaling overpredicts human risk several-fold.

These results are sometimes cited as tending to support mg/kg/day scaling, but such a conclusion should be tempered. The particular choice of risk assessment assumptions (among many examined) in the widely cited analysis is the one with results least favorable to surface area scaling; most of the alternatives discussed by Allen et al. (1987) show that body weight scaling underestimates human risks by about the degree to which surface area overestimates it. Moreover, these analyses contain a bias of the sort outlined above—the animal potency for a chemical is characterized by the median of the *lower bounds* on the RRDs for the various animal data sets rather than on best estimates. At present it is unresolved how much the use of central estimates of animal risk to predict central estimates of human risk—a more appropriate analysis for resolving the scaling factor—would shift the results toward favoring surface area scaling.

Two additional studies of comparative cancer potencies should briefly be mentioned, both favoring a somewhat more conservative scaling factor. Raabe et al. (1983) compared bone cancer risks from radium in watch dial painters (who ingested radium by tipping brushes on their tongues) and in beagle dogs exposed to radium by injection. Doses were measured as dose to bone of deposited radium, so this camparison can be seen as lacking the pharmacokinetic component of cross-species differences. Potency was measured by the relative mean degree of life-shortening as a function of does. The authors argued that a cumulative lifetime radiation dose per unit of bone seemed to give good correspondence between human and dog. This result could be related to mg/kg/lifetime scaling for chemical agents.

Kaldor et al. (1988) examined carcinogenic potency of five antineoplastic drugs, using potencies derived from bioassays in rodents and from the secondary tumors the drugs caused in human cancer patients. They argued that potency seemed to be related to total cumulative lifetime exposure per kg of body weight.

The empirical evidence on cross-species scaling of carcinogen potencies can be summed up as follows. The correlation of agents' potencies across species is clearly and strongly demonstrated. This correlation extends to humans, so far as is ascertainable from the limited number of agents for which potencies can be estimated epidemiologically. There is a remarkable agreement among studies that the dose-scaling methods in current use span a range that appears approximately correct. The resolution of the data available at present, however, does not permit a clear choice between surface area and body weight scaling. Empirically chosen scaling factors tend to fall in between these two choices in most cases, but the specific results depend on the laboratory strains used, route of administration, details of the methods for characterizing the carcinogenic potency in animals, and the statistical methods used in curve fitting. The data seem consistent in indicating that body weight scaling somewhat underestimates risks in larger species. The exception is when Osborne-Mendel or Sprague-Dawley rats are compared to B6C3F1 mice, in which comparison the rats are seen to be less affected even by doses scaled to body weight. The preponderance of data are from Fischer 344 rats, however, and this is the strain used in most modern bioassays.

Several points should be borne in mind while interpreting the empirical scaling data. First, although several studies are reviewed, they overlap considerably in their databases; the individual studies are not independent tests. Second, the specific results of a study depend on details of the methodology. The Allen et al. (1987) study showed that whether potencies were averaged over sexes, whether both benign and malignant tumors were counted, whether projections were made for specific tumor sites or for the most potent site, and other such factors could swing the analysis toward favoring one scaling method or another. It is hard confidently to identify and isolate the specific contribution of dose scaling among the many factors that contribute to the final predictions of human risk. Third, the epidemiologically based human potencies that serve as "targets" for the animal-based extrapolations are themselves very uncertain and, as in the animal data, dependent on the specifics of the methodology used in their

estimation. As a result of this and of the previous point, the comparability of animal- and human-based potencies may be problematic. (For example, potencies calculated from human data are usually based on cancers that were the cause of death following partial lifetime exposure, while animal-based estimates usually reflect incidental as well as fatal tumors arising after full lifetime exposure.) A final point to be borne in mind is that the report empirically derived factors represent averages over large numbers of cases. Although the means vary over a narrow range, the individual chemicals show ratios of potencies in different species that span orders of magnitude. Most of the rat-to-mouse comparisons were within an order of magnitude of the average scaling relationship, but several agents showed a 100-fold difference. Variances of rodent-to-human potency ratios were higher, reflecting the uncertain determination in humans and the lack of standardized experimental design. The existence of this scatter of cases around the mean helps to define the limits to the resolution of any scaling method and emphasizes the importance of case-to-case variation. Moreover, it provides some insight into the distribution of uncertainty in the cross-species dose extrapolation step of risk assessment.

Despite these shortcomings, the empirical data support the general practice of scaling rodent potencies to humans, and show that, on average, the current methods perform satisfactorily. Certainly, any method that produces average results an order of magnitude higher or lower than the range represented by body weight and surface area scaling would be in contradiction to the empirical data. The data suggest that a scaling factor in between the surface area and body weight scaling can be considered to have empirical support.

B. Allometric Approach

The complement to the empirical investigation of potency scaling is a more theoretical approach that seeks to identify the biological factors whose variation underlies the variation in a carcinogen's potency across species, and then attempts to adjust for their effect. Clearly, these factors are numerous and, for the most part, poorly understood. Fortunately, there are some rather simple and general quantitative patterns in the variation of many features of anatomy and physiology across differently sized mammalian species, representing broad trends in the way the essentially similar mammalian system operates in large and small editions. Although specific processes acting on specific chemicals can (and do) deviate from these broad trends, it is argued below that the general patterns can provide a benchmark that expresses the expectation about a chemical's carcinogenic potency in small mammals such as experimental rodents and larger ones such as humans. This expectation can be refined (or refuted) by case-specific biological and mechanistic data, when available, showing how the actual processes of metabolism and carcinogenesis differ from the presumptions of the broad trend analysis that serves as the default.

The aim of a dose-scaling methodology is to estimate administered daily doses to experimental rodents and humans that result in equal lifetime cancer risks. That is, the scaled doses are intended to be "toxicologically equivalent." It is useful to recognize two components to this equivalence. The first, which might be termed "pharmacokinetic equivalence," concerns adjustment of the administered dose to a rodent or human so that the corresponding tissues that constitute the targets of the agent's toxicity receive similar exposures to the toxin. The second, or "pharmacodynamic equivalence," relates to the relative tissue doses that, when experienced daily for a lifetime, yield equal lifetime cancer risks. This latter aspect includes, but goes beyond the question of "sensitivity" to address species differences in the operation of the carcinogenic processes as they relate to tissue does. For both the pharmacokinetic and the pharmacodynamic component, scaling questions arise and the problem of defining "equivalence" must be faced.

By way of illustration, consider a hypothetical agent with rather simple pharmacokinetics (first order elimination from a single compartment) given by intravenous injection to a mouse and a human. As shown in Figure 1, such a compound will demonstrate an almost instantaneous peak in its blood concentration, followed by exponential decline. If the administered doses are equal in terms of mg/kg body weight, the peak concentrations are the same in the mouse and the human, but the mouse rids itself of this body burden faster, owing to its more rapid metabolism and elimination compared to the human. As a result, the area under the curve (AUC) of blood concentration as it declines with time is much less in the mouse. If the amount injected is properly adjusted, as illustrated in Figure 2, a concentration profile can be achieved in which the initial peak blood concentration is much less in the human, and yet is balanced by the compound's longer persistence to generate an AUC equal to that of the mouse.

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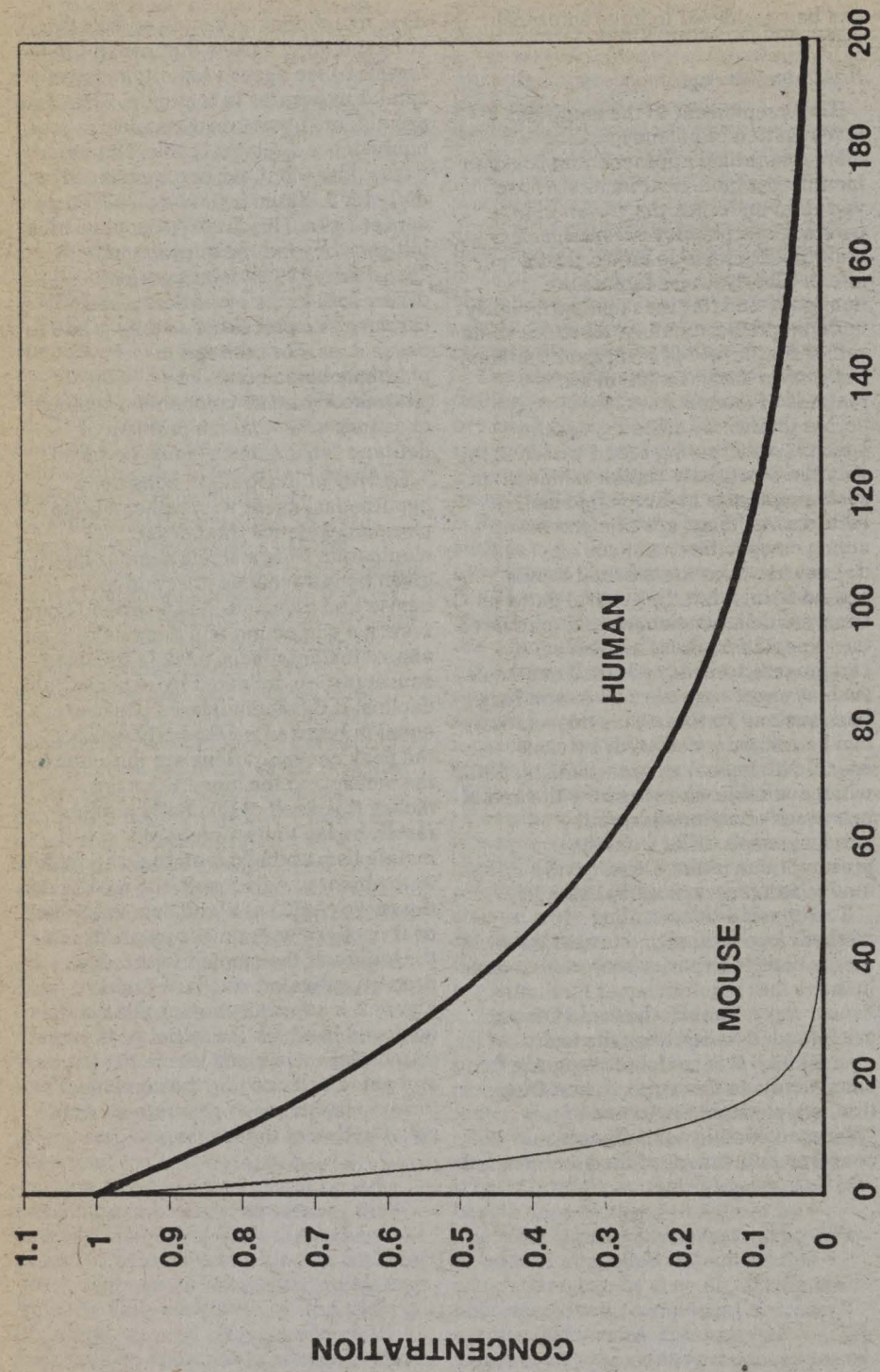

Figure 1. Blood concentration following injection of a dose scaled to body weight in a mouse (light line) and a human (heavy line). The human has an area under the curve that is 7-times greater.

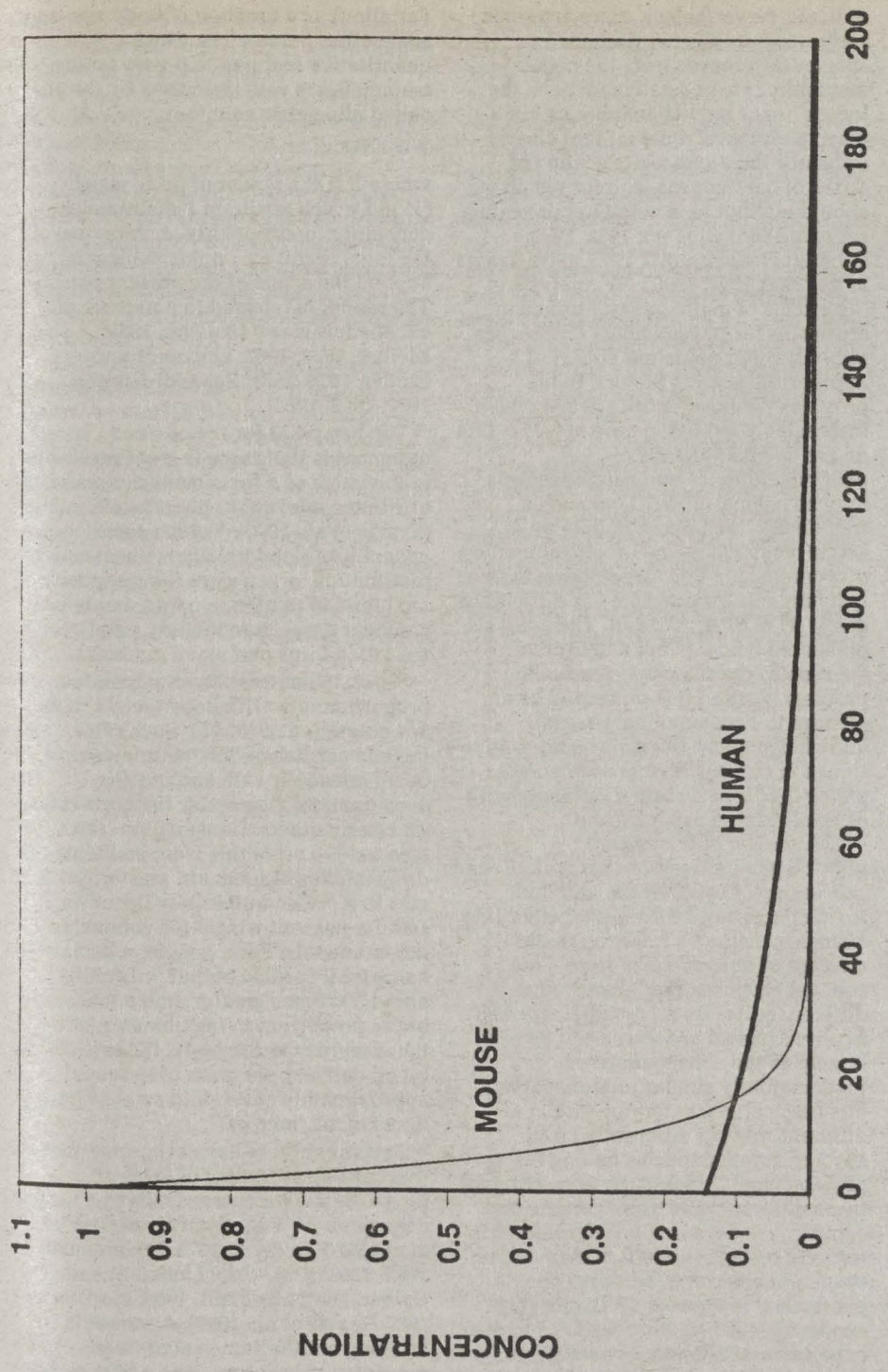

Figure 2. The injection amount scaled in proporation to $W^{3/4}$. The initial concentration in the mouse (light line) is 7-times higher than in the human (heavy line), but the AUCs are equal.

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This example illustrates two points: that knowledge of a compound's pharmacokinetics can suggest scaling of administered doses so as to equalize the exposure of internal targets of toxicity, and that "equal" internal exposure requires further definition. The area under the concentration curve encompasses both the amount of a compound that is present and the duration of its presence, providing a measure of the compound's opportunity to interact with the targets of toxicity. Moreover, since the AUC is the integral of concentration X time—that is, the "sum" of many momentary concentration levels—dividing the AUC by the time interval over which it is measured gives the average concentration during that interval. As such, the AUC is more representative of the target organ's total exposure to the agent than is the peak concentration. The AUC provides a measure of the agent's opportunity to participate in critical reactions at the target site. For example, for DNA-reactive compounds, the AUC is predictive of the rate of generation of DNA adducts (Hattis, 1990), while for moderate levels of receptor mediated carcinogens it tends to be proportional to average receptor occupancy. For such reasons, pharmacokinetic equivalence is usually defined in terms of equality of AUCs.

If this hypothetical chemical is assumed to be a carcinogen, an added difficulty in defining pharmacodynamic equivalence is also readily apparent. It should be remembered that equally carcinogenic doses are defined in terms of exposures repeated *every day* over a full lifetime. An adjusted daily dose that yields pharmacokinetic equivalence for one day's exposure of the target organ (as illustrated in Figure 2) is repeated for 2 years in the lifetime of a mouse, but 70 years in a human's. Furthermore, if the agent's stress on the physiological system at any given moment is not proportional to its concentration, the fact that the pharmacokinetically "equivalent" equal AUCs are achieved from different time-patterns of target organ exposure (as seen in Figure 2) could affect the carcinogenic consequences. These and other issues will be discussed at greater length further on in this document; they are raised here to emphasize that pharmacokinetic equivalence need not lead to carcinogenic equivalence without first employing further scaling considerations.

Clearly, actual pharmacokinetic and pharmacodynamic processes will be more complex than the simple considerations mentioned above would indicate. Nevertheless, there are some well recognized general trends in species differences (e.g., the higher metabolic rate in small mammals, the longer tumor latency in humans via-a-vis experimental rodents) that clearly influence the appropriate scaling of doses of carcinogens, and for which we should attempt to account in our scaling rationale (Boxenbaum, 1982, 1983; Schmidt-Nielsen, 1970, 1975, 1984; Travis et al., 1990; Ings, 1990). An analysis of the effects of major general trends in cross-species physiological differences not only helps guide our choice of appropriate scaling factors, but it provides the benchmark against which increasingly available case-specific data on the complex details of pharmacokinetics and carcinogenesis may be compared. Without such a framework, the impact of data on a single component—metabolic activation of a carcinogen in a target tissue in mice and humans, for example—is difficult to guage (U.S. EPA, 1987a,b). The analysis presented below is not a definitive solution to the cross-species scaling problem. Rather, it is presented as an attempt to accommodate present knowledge about the major quantitative trends in comparative anatomy and physiology into a scaling rationale with explicity stated assumptions.

The scaling of the myriad physiological processes that underlie the processing of carcinogens and their toxic effects can be drawn together into a single scheme by referring to the concept of *physiological time*. This concept proposes that quantitative differences across mammalian species in physiological processes can be seen largely as the consequence of fundamentally similar anatomical and biochemical machinery operating at different *rates* in differently sized species, smaller species having faster physiological "clocks." By correcting for these differences in size and time one can express dose-response problems in terms of a single scale-free mammalian system in which scaled doses should yield equal responses. (It is this very similarity, after all, that leads us to use experimental animals as surrogates for humans in risk assessment.) In the sections that follow, the issues of pharmacokinetic and pharmacodynamic equivalence are considered in turn.

1. Species Differences in Pharmacokinetics

The physiological time concept emerges from the study of the allometry of key physiological and anatomical variables that affect pharmacokinetics. Allometry studies the variation in features (and the consequences of that variation) as a function of body size and some other parameters. Most quantitative features that vary among mammals are well described by the so-called allometric equation,

$$Y = a W^b,$$

where b is the power of body weight (W) to which attribute Y maintains a constant proportionality, a. A review of the large literature on this subject is beyond the scope of the present paper. The reader is referred to a number of excellent reviews (Adolph, 1949; Kleiber, 1932, 1961; Lindstedt and Calder, 1976, 1981; Schmidt-Nielsen, 1970, 1975, 1984).

The key point for the present argument is that there is great regularity in the value of b for certain classes of attributes relevant to pharmacokinetics (Travis et al., 1990). Volumes and capacities (blood volume, volumes of distribution, organ sizes, lung capacity, etc.) tend to remain in approximately constant proportion to body size (i.e., $b \approx 1.0$) in large and small mammals.

Rates, in contrast, tend to maintain proportionality with body weight to the 3/4 power (i.e., $b \approx 0.75$). Such rates include cardiac output, minute volume, basal metabolic rate and oxygen consumption, glomerular filtration rate, and many others. Consumption rates also tend to scale this way, including daily intakes of food, air, and water. A rate that scales in this way becomes smaller per unit weight (or volume) in larger animals. For example, a human has a total cardiac output (mL/min) about 300 times greater than a mouse, but in proportion to the human's 2000-times more massive body, the rate of blood delivery per gram of tissue is approximately seven-fold smaller (in terms of mL/min/g).

Several authors have suggested that this consistent scaling of rates of physiological processes leads to a useful concept of *physiological time* (Dedrick et al., 1970; Dedrick, 1973; Boxenbaum, 1982, 1983, 1984, 1986; Lindstedt and Calder, 1981; Mordenti, 1986; Lindstedt, 1987; Travis et al., 1990). A mouse is carrying out the same set of physiological processes as a human, but each process proceeds at a rate some 7-times faster. The various processes stay in proportion to one another, but all of them are relatively sped up in smaller species. If one scales the units of *time* by dividing them by the fourth root of body mass (i.e., $\min \cdot W^{-1/4}$, correcting the physiological time scale) then the time-course of physiological processes becomes congruent across species. If time were measured according to some internal, physiological standard (such as

heartbeats, breaths, blood circuit times, clearance half-lives, etc.), rather than in minutes, then the rates of pharmacokinetic processes, the time course of disposition of a dose, and even life milestones and lifespan would all be about equal across species. (As discussed more fully below, humans tend to be an outlier in the relationship of lifespan to $W^{1/4}$, living longer than expected. Some authors have addressed this by including brain weight as a second factor in the allometric equation [Boxenbaum, 1986].)

This concept is illustrated by the simple example introduced in the previous section (shown graphically in Figure 1)—a single intravenous dose of a compound to a mouse and a human, and its subsequent blood concentration as it is removed from a single body compartment. (The simplicity is for illustration; the argument can be shown to hold for more complex pharmacokinetic models as well, e.g., Travis et al., 1990.) If doses are scaled to body weight (mg/kg) then initial concentrations are equal, but the blood level takes much longer to decline in the human, owing to slower processing of the compound. The human has a bood volume (which is proportional to body weight) some 2000-fold higher than the mouse, but the compound must be cleared from this volume by processes (metabolism and/or excretion) that operate only 300-fold faster (or seven-fold slower per unit blood volume). As a result, the human has an area under the blood concentration curve (or AUC) that is 7-fold higher. The AUC has units of [conc.]•[time], e.g., (mg/L)•min.

There are two kinds of scaling one could imagine to accommodate the species difference in pharmacokinetic behavior. The first has already been illustrated in Figure 2; one could give a smaller initial dose to the human—one that is seven-fold smaller in terms of mg/kg *but equal in terms of mg/kg*$^{3/4}$. The initial concentration is lower, but this is balanced by the slower removal to give the same AUC as seen in the mouse.

Alternatively, one could give the same initial mg/kg dose, but scale the *time* axis, expressing time in "physiological time units" (i.e., minutes divided by $W^{1/4}$). This is illustrated in Figure 3. Such graphs are sometimes called "Dedrick plots," following the demonstration of Dedrick et al. (1970) that scaling time in this way leads to congruity of methotrexate pharmacokinetics among several species. The mouse and human curves are identical on such a graph, falling to the same concentration after the same amount of *physiological* time has elapsed. (Of course, it still takes 7-times more minutes in a human for a given interval of physiological time to elapse. The AUC in the usual chronological time units is still bigger in the human, but in units of [conc.]•[physiological time] it is equal.)

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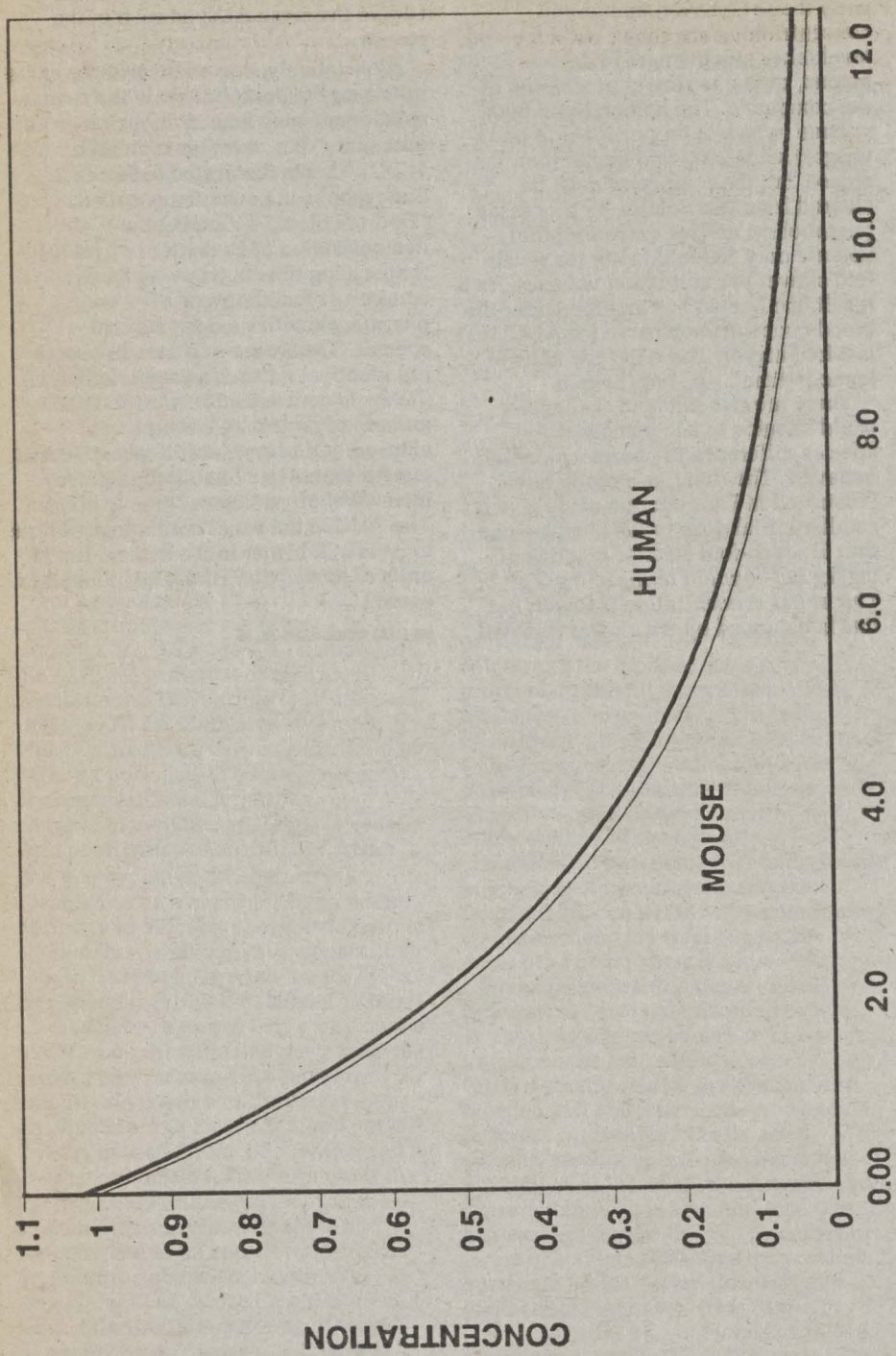

Figure 3. The human and mouse curves are superimposed when the time axis is expressed in units of physiological time, i.e., $/min. \cdot W^{-1/4}$.

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It can be shown that these two scaling approaches—shrinking doses or stretching the time scale—give equivalent ways of dealing with scale differences as long as saturable pharmacokinetic processes do not figure prominently (O'Flaherty, 1989). For example, consider the slightly more complex case of repeated dosing. Figures 4 and 5 show blood concentration versus time curves for bolus dosing repeated at regular intervals. If dosing is daily (i.e., inter-dose intervals are equal for animal and human in clock time, as in Fig. 4) then scaling the bolus amount by $W^{3/4}$ achieves an equal area under the curve after a given number of days, as well as an equal average steady-state blood concentration. Alternatively (Fig. 5), one can give equal mg/kg doses spaced according to equal intervals of physiological time (e.g., daily in the mouse and every seven days in the human) to achieve the same end.

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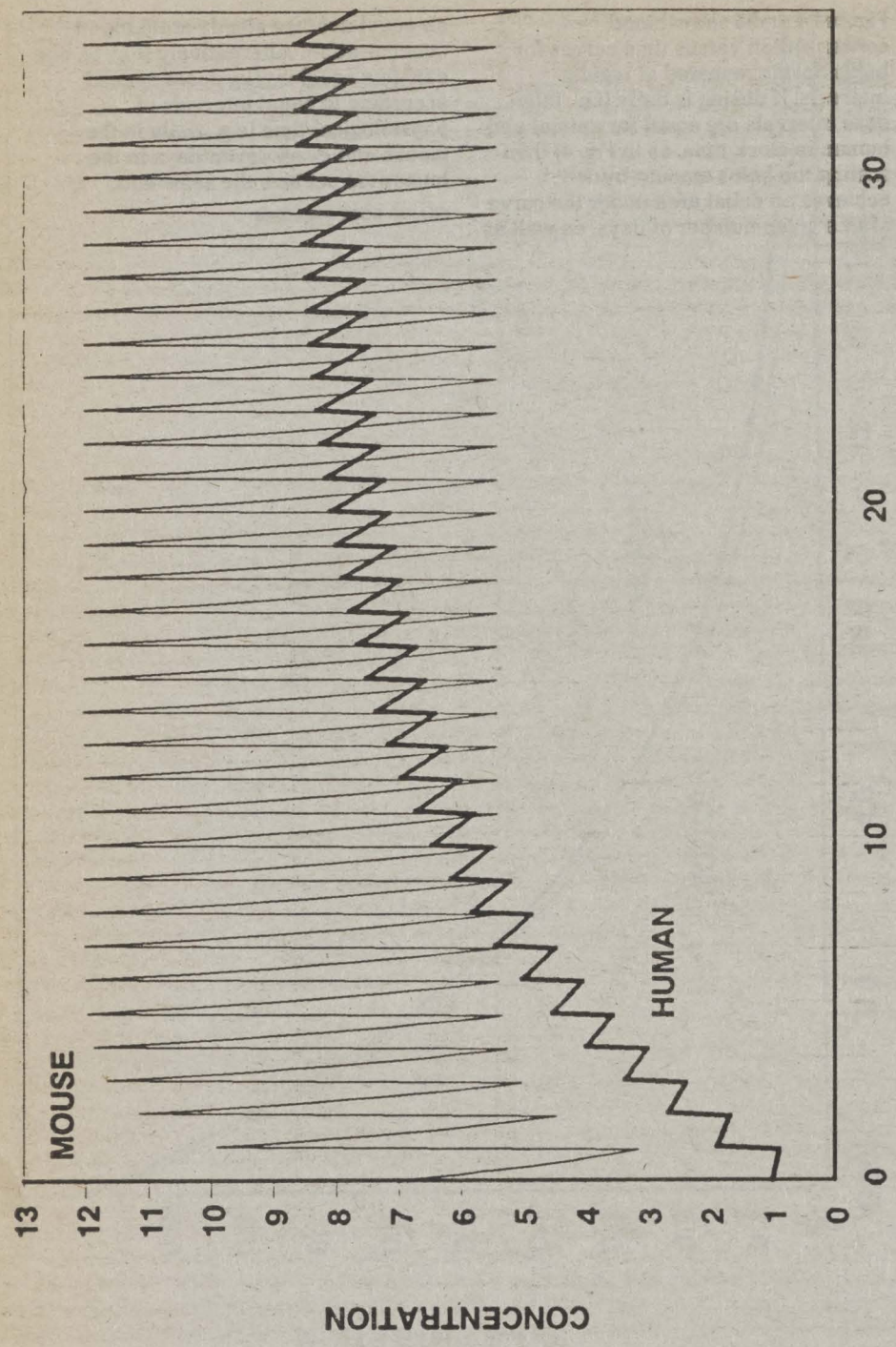

Figure 4. Repeated daily doses scaled to $W^{3/4}$ in the mouse (light line) and the human (heavy line).

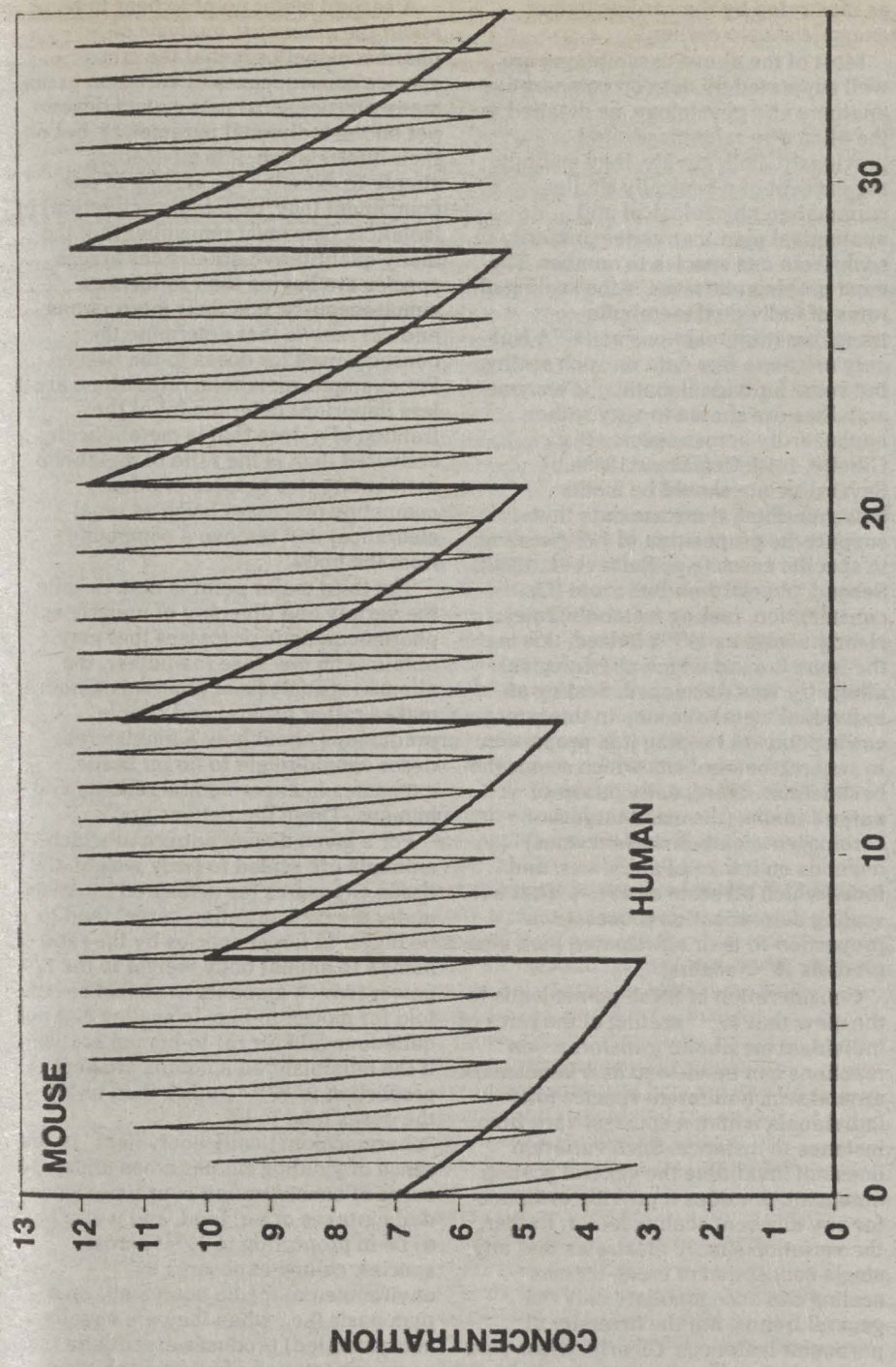

Figure 5. Repeated dosing of amounts scaled to body weight, repeated daily in the mouse (light line) and every 7 days in the human (heavy line).

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The foregoing examples are of course simplified and hypothetical, designed to illustrate the principles of allometric variation in physiological rates and volumes and their impact on the relation of administered dose to the degree of "internal" exposure. The same principles, however, can be shown to apply to much more complex pharmacokinetic systems as well, including multicompartment models, multiple routes of uptake and elimination, and multiple metabolic pathways causing carcinogenic activation and/or detoxification. The arguments have been most extensively developed by Mordenti (1986), O'Flaherty (1989), and Travis et al. (1990). The complete elaboration of the allometry of pharmacokinetics is too complex to detail here, but a few important points should be made.

First, the ability to predict the pharmacokinetic consequences of variation in the dozens of parameters that affect a chemical's uptake, distribution, processing, and elimination rests on the *regularity* in their cross-species variation and the *congruence* of these patterns for certain classes of parameters (rates, volumes, etc.). If physiological features varied haphazardly across species, or if all features had independent allometric patterns unrelated to one another, then no dose scaling method could be defined ($W^{3/4}$ or any other) to approximate pharmacokinetic equivalence without first knowing the compound's pharmacokinetics in detail.

Owing to their importance, it is well briefly to examine the starting assumptions that form the basis of the allometric, "physiological time" concept and its predictions. They are: (a) Volumes and capacities (organ sizes, blood volumes) retain proportionality to W; (b) the absolute rates of physiological processes are proportional to $W^{3/4}$; these rates include cardiac output, minute volume, glomerular filtration, and the rates of specific metabolic steps; (c) physicochemical and thermodynamic properties of compounds (solubilities in various tissues) are equal in all species; and (d) for metabolic pathways with saturable metabolism, the Michaelis constant (the substrate concentration at which half the maximum reaction velocity is achieved) is invariant, while the maximum velocity scales as $W^{3/4}$. A corollary to points (a) and (b) is that when rates are figured relative to body size (or to a volume, or in terms of concentration rather than absolute amount), they scale as $W^{3/4}/W = W^{-1/4}$, as illustrated by the cardiac output example shown earlier.

Most of the above assumptions are well supported by data on comparative anatomy and physiology, as detailed in the allometry references cited previously. Collectively, they embody the concept of a basically similar mammalian physiological and anatomical plan that varies primarily in scale from one species to another. The most problematic issue is the scaling of rates of individual metabolic transformation reactions as $W^{3/4}$. Not only are there few data on such scaling, but some individual metabolic enzyme activities are shown to vary rather haphazardly across species (e.g., Gillette, 1987; Calabrese 1986a,b). Several points should be made, however. First, there are data that support the proposition of $W^{3/4}$ scaling in specific cases (e.g., Reitz et al., 1988). Second, overall metabolic rate (O_2 consumption, resting metabolic rate) clearly scales as $W^{3/4}$; indeed, this is the issue around which physiological allometry was developed. Scaling an individual metabolic step in this way corresponds to keeping it in proportion to general metabolism, which seems the best default. Third, daily intake of natural toxins (the usual targets of carcinogen-metabolizing enzymes) depends on intake of air, water, and food (which all scale as $W^{3/4}$). That is, scaling detoxification processes in proportion to their anticipated load also predicts $W^{3/4}$ scaling.

Consideration of these points leads to the view that $W^{3/4}$ scaling of the rates of individual metabolic transformation reactions can be viewed as a benchmark around which different species (and individuals within a species) vary from instance to instance. Such variation does not invalidate the general scaling argument, nor does it provide evidence for any different scaling factor. Rather, the variation simply illustrates that any single conception of cross-species scaling can accommodate only the general trends, not the diversity of particular instances. Clearly, when data on metabolic conversion are available in a particular case, they should be used in preference to the $W^{3/4}$ default. In fact, instances of chemical-, dose-, and species-specific variation in metabolic transformation of a chemical may constitute the principal reason for deviation from the allotmetric default assumptions herein laid out. Accordingly, empirical determination of such metabolic variation constitutes the most important pharmacokinetic data that can be brought to bear on the estimation of target tissue exposures.

A second major point to bear in mind about the allometric analysis of pharmacokinetics is that the cross-species consequences of variation in the many physiological parameters depend not on the individual parameters, but on their interrelation. It is misleading simply to examine the scaling of one component (say, metabolic activation) in isolation. One must remember that the many quantitative differences across species are having their influences simultaneously; it is their *interactions* and *net results* that determine the consequences for doses to the tissues. For example, metabolic rates alone are a less important determinant of the fraction of a dose that is metabolically activated than is the ratio of metabolic activation rates to rates of other competing processes (such as renal clearance) that remove a compound from the body.

The third major point is that, despite the variety and diversity of underlying pharmacokinetic processes that may obtain from one case to another, the allometric analysis of pharmacokinetics makes rather general and simple predictions about how administered doses should relate to target tissue exposures in experimental rodents and humans. These predictions are:

For a given dosing pattern in which amounts are scaled to body weight, the tissue exposures (as measured by areas under the concentration curve) tend to be bigger in larger species by the ratio of human to animal body weight to the 1/4 power (which amounts to almost seven-fold for mouse-to-human scaling and not quite four-fold for rat-to-human scaling). If the administered amounts are kept in proportion to $W^{3/4}$ (rather than to W) the doses tend to be "pharmacokinetically equivalent" in the sense of yielding similar areas under the curve of concentration over time. Since daily intakes of air, food, and water tend to be in proportion to $W^{3/4}$ across species, calling exposures to environmental media equivalent on a ppm basis (i.e., when they are equally contaminated) produces essentially the same expectation of pharmacokinetic equivalence as scaling by $W^{3/4}$ (Hattis, 1991).

In fact, all variables containing [time] in their units will scale in a way that leads to the human value being bigger by the ratio of body weights to the 1/4 power. If these variables are reexpressed in terms of "physiological time units," i.e., [time] $\cdot W^{-1/4}$, then their values are equal across species.

The above conclusions apply to parent compound and to metabolites, since (in this generalized scheme)

metabolites are also subject to scale-affected clearance processes. In humans a metabolite may be formed more slowly, but the amount that is formed persists longer, resulting in similar AUCs as seen in rodents. The pharmacokinetic equivalence applies not only to an agent's concentration in blood, but also to concentrations in any specified organ or tissue. Thus, the scaling applies to the AUC of the ultimate carcinogenic species (be it parent compound or metabolite) at the particular site in the body that constitutes the target of carcinogenesis (presuming the target site to be the same across species).

The proportion of the administered dose that ends up having any particular ultimate fate (e.g., being excreted unchanged, being metabolized by a particular biochemical pathway at a particular site, being excreted as a conjugate in the urine, etc.) is predicted to be the same independent of species. That is, if a mouse given 10 mg/kg of an agency ends up metabolizing 4 mg/kg into a form that has an AUC in the spleen of 100 (mg/L)•min, then the allometric prediction for a human given 10 mg/kg is that 4 mg/kg will be metabolized, but the AUC in the spleen will be 700 (mg/L)•min, owing to the metabolite's slower clearance.

A difficult situation arises when the active carcinogen is neither the parent compound nor a stable metabolite, but rather a very reactive metabolite, perhaps an intermediate formed ephemerally during the course of metabolic transformation. If this reactive compound is removed by spontaneous reaction (rather than further enzymatic processing) and if such spontaneous reaction is so rapid that the moiety never leaves the tissue in which it is formed, then the removal rate may no longer be species-dependent; instead, it may hinge only on physicochemical properties of the reactant and its milieu. In such a case, without species differences in persistence, the AUC of the reactive moiety in its tissue of formation may be proportional to the amount formed. Such AUCs would tend to be equalized when doses are scaled to body weight, rather than to $W^{3/4}$ (Travis, 1990).

It may be well to reiterate at this point that the reason for constructing these general allometric arguments is to predict the AUC of the proximate carcinogenic agency at its site of action in those cases (which constitute the majority of cases at present) for which no better means exists to determine relative target tissue doses in rodents and humans. Clearly, if better means exist to characterize target tissue exposures, they should take precedence. Pharmacokinetic modeling of a particular compound may demonstrate that the allometric presumptions are in error. Two possible causes of such error are: (a) species differences in metabolic processing that do not adhere to the rule of proportionality to $W^{3/4}$, and (b) saturation of metabolism in one but not the other species as a result of comparing markedly different dose levels or dosing regimens. The importance of the "reactive metabolite" scenario outlined in the previous paragraph is best determined by case-specific characterization of metabolic activation and its effects. Macromolecular adducts may be particularly useful in this regard since, under certain circumstances (including negligible repair), their accumulation in a tissue would be expected to be proportional to the AUC of the adduct-forming moiety in that tissue.

It must be conceded that, in actuality, mice and rats are not simply scale-model humans; certain particular characteristcs (metabolism among them) do not necessarily vary in a simple way with body size. However, the long-standing toxicological practice of using rodent exposures to toxic agents as surrogates for the human experience rests on the belief that, to a first approximation, the similarities that stem from a shared mammalian anatomy and physiology outweigh the differences. The species differences in size, uptake rates, basal metabolism, blood flows, organ sizes, and so on are clearly important to acknowledge in any dosimetric scheme. The allometric arguments adduced here attempt to construct a logical and consistent framework for investigating cross-species dosimetry. This framework provides a basis for articulating the expected consequence of those broad general patterns of cross-species difference in size scale and time scale that we understand, while providing rebuttable default positions for those aspects, such as chemical-specific metabolism, that are less well understood.

2. Species Differences in Pharmacodynamics

The overall aim of dose scaling is to achieve toxicological equivalence across species. The foregoing section discussed pharmacokinetic equivalence. For such results to be useful for carcinogen risk assessment—that is, to complete the equation of exposure and tumorigenic response—it remains to determine what toxicological consequences to expect from given target tissue exposures in humans and animals. As argued earlier, the principles of pharmacodynamic equivalence are far from self-evident.

The issues about pharmacodynamic equivalence fall into three categories. First, the appropriate measures of "delivered dose" would seem to depend on details of the mechanism of toxic action, details that are frequently poorly understood. In the foregoing section, scaling of administered doses was discussed in terms of tendency to equalize the AUC, an integrated measure of target tissue concentration. Although this is a frequent and widely accepted measure of a target organ's exposure to a toxin (Voisin, et al., 1990), its use as a measure of carcinogenic equivalence of doses rests on the presumed proportionality of the rates of toxicological reactions to the AUC. If the underlying reactions that comprise the process of carcinogenicity are markedly nonlinear with target-tissue concentration, if they include capacity-limited steps or magnitudes below which significant stress on the system is absent, then proportionality of toxic response to the AUC (or to any other easily characterized summary measure of target-tissue exposure) becomes problematic. Thus, use of the AUC as an "equivalent" tissue dose should be regarded as a default that corresponds to the presumption that the processes constituting carcinogenicity operate in proportion to the concentration of the carcinogen at the target. In particular applications, this assumption should be critically examined, and relevant data brought to bear, if possible.

The second issue returns to the question of scale. For corresponding organs bathed in an equal concentration of carcinogen, a human will have many more target cells exposed than a rodent, only one of which need be transformed to found a tumorigenic clone. Moreover, during the course of a full lifetime under this dosing regime, a human's cells will be exposed for much longer and undergo many more cell divisions (NAS, 1975; U.S. EPA, 1987a). Although this would seem to suggest a much larger sensitivity to carcinogens in larger species, the empirical evidence shows instead a rough lifetime-to-lifetime equivalence across species of both the magnitude of spontaneous cancer risk and the age pattern of its appearance. When arguments from first principles lead to answers that are clearly off track, it indicates that key factors have not been brought into consideration. In this case, the role of species differences in repair processes may enter. Also, the number of cells (or cell divisions) at risk may be less different among species

than presumed, owing to slower turnover, stem cell populations that are not proportional to tissue volume, or other factors. The point is raised here simply to emphasize that size and timespan differences across species may have key roles in comparative pharmacodynamics just as they do in comparative pharmacokinetics, although the particulars are not clear at present. In the face of this difficulty, it has been the ususal practice to assume lifetime equivalence when projecting carcinogenesis patterns across species, an assumption that has held up well in experience. This point will be returned to below.

The third issue in pharmacodynamic equivalence also parallels one in pharmacokinetics—that of the uniqueness and species-specificity of carcinogenic responses that tends to obscure overall trends and patterns. The pharmacodynamic reasons for differences in sensitivity of potential target organs among species are perhaps more obscure than the pharmacokinetic reasons, but they surely exist. As with the case-by-case particulars of pharmacokinetic processes, the idiosyncratic and species-specific variations in responsiveness to carcinogenic stimuli create an unavoidable envelope of uncertainty around the predictions of a scaling methodology that can only characterize the average behavior of carcinogens overall. When data are available that enable the investigator to incorporate knowledge of species differences in the carcinogenic reactions to a given level of target-tissue dose, they should be considered in the analysis and incorporated when appropriate.

Although certain pieces of the puzzle of cellular and molecular biology that underlie carcinogenesis are known, and despite rapid progress, it not yet possible to undertake a detailed analysis of the magnitudes and causes of species differences in the carcinogenic process. At present, there can be no empirical and allometric characterizations of general cross-species trends, as has been done in this report for the pharmacokinetic part of the equation. One can, however, make use of the observation of general lifetime-equivalence, noted above, to suggest how the insights of cross-species patterns in pharmacokinetics might be applied to the question of toxicological equivalence.

3. Toxicological Equivalence

When experimental animals and humans are exposed to a chemical in such a way that they experience equal areas-under-the-curve of the proximate carcinogenic agent (be it the parent compound, a metabolite, or a reactive intermediate of metabolism) at the target of toxic action, then they will have their susceptible tissues exposed to equal *average* concentrations of the carcinogen over the exposure period. Over the course of a full lifetime of exposure, the lifetime average target-tissue concentrations are equal (although the total accumulated AUC is larger in humans, by virtue of their longer lives). The earlier discussion of pharmacokinetics argued that, if daily administered doses are scaled in proportion to $W^{3/4}$ (or if exposures of equal duration are equated on a ppm basis), such equality of resulting AUCs tends to result across mammalian species.

If the empirical principle of lifetime-to-lifetime equivalence is applied, then a possible presumption is that such pharmacokinetically equivalent lifetime exposures (in terms of equal average concentrations of the carcinogen at its target) should be equivalent in the degree of lifetime cancer risk they engender (although other interpretations of the consequences of pharmacokinetic equivalence are possible). That is, it may be assumed that equal carcinogen concentrations at the target lead to equal degrees of impact at the cellular level which, if continued for a lifetime, yield equal lifetime probabilities that a tumor will be caused in that target organ.

The reasons for approximate lifetime equivalence in the carcinogenic process among species of different body size and lifespan are not clear. One can, however, rationalize this observation by extending the concept of physiological time from pharmacokinetic processes to cover pharmacodynamic processes as well. The following section explores this approach.

4. A Physiological Time Approach to Toxicological Equivalence

It is helpful to begin by considering the case of "zero" dose, i.e., by examining background or spontaneous carcinogenesis. Although the common cancer types differ somewhat, humans and experimental animals have roughly similar lifetime cancer rates. Moreover, the latency periods are greatly different in animals and humans, but in a way that is roughly proportional to lifetime. Age-specific incidences are also roughly parallel when time is measured not in years, but on a lifetime scale (Cutler and Semsei, 1989). If these equivalencies were not so, we would either never see tumors in experimental animals (since they would die of other causes before the 20-to-40 year latency was completed), or we would find humans to be overwhelmed with spontaneously arising tumors during childhood. These results from spontaneous carcinogenesis appear to be paralleled by chemically induced cancers, in that such cancers also arise and progress on a "lifetime" time scale in experimental animals and humans.

The above results suggest that carcinogenesis proceeds more slowly in larger animals, in a way that makes its progress roughly constant per lifetime, rather than per unit of clock time. This is in accord with the current risk assessment practice of equating lifetime cancer incidences in humans and rodents. It would seem that the concept of physiological time—that large animals carry on their life processes at an overall slower pace than smaller ones—proves as useful in examining pharmacodynamics as it does for pharmacokinetics. As argued in the previous section, the rates of the underlying pharmacokinetic processes tend to operate in proportion to a size-dependent physiological time "clock," which allows appropriate scaling to explain and correct for species differences in pharmacokinetic end points." In the case of carcinogenesis, the component physiological features and processes are less easily observed, but the "pharmacodynamic end point" can be seen in the above-mentioned cross-species patterns of spontaneous carcinogenesis. In sum, not only may "pharmacokinetic time" vary among species in a regular way, "pharmacodynamic time" may do so as well. Total lifespans of different species generally scale in rough proportion to $W^{1/4}$ (Sacher, 1959; Lindstedt and Calder, 1976, 1981). (In terms of the physiological time concept, the "processes of living" that proceed at a rate proportional to $W^{3/4}$—or on a per kg basis, to $W^{-1/4}$—go slower in a larger animal, and so take chronological time in proportion to $W^{1/4}$ to go "to completion.") Hence, the two physiological time scales are quite similar. However, humans live longer than their allometric prediction by about a factor of five.

The above discussion of pharmacodynamics suggests that carcinogenesis (in common with other physiological processes) proceeds more slowly in humans than in rodents, in a way that tends to be equivalent on a lifetime basis. Together with the pharmacokinetic results outlined earlier—namely, that scaling daily administered doses in proportion to $W^{3/4}$ tends to result in "pharmacokinetically equivalent"

exposures to corresponding organs and equal steady-state concentrations of agents and their metabolites—this suggests that administered doses of carcinogens be considered equal in lifetime risk when expressed in units of mg/kg $^{3/4}$/day. One possible interpretation of this line of reasoning is that tissues experiencing equal average concentrations of the carcinogenic moiety over a full lifetime should be presumed to have equal lifetime cancer risk. Under the arguments on pharmacokinetic allometry set out earlier, such equality of average concentrations would tend to be produced by daily administered doses scaled in proportion to $W^{3/4}$. However, if the pharmacokinetically equivalent doses can be obtained by experimental means, under this line of reasoning, such results could replace the allometric presumptions, and equal risks would be expected when average daily AUCs are equal (or equivalently, when average concentrations are equal). If the default allometrically based assumptions about pharmacokinetics are adhered to by a particular compound, the introduction of data in place of assumptions will leave the answer unchanged. Other interpretations of the question of the cross-species toxicological equivalence of delivered doses are possible, and the issue remains one on which further insight would be helpful.

If we use a scale of pharmacodynamic time based on the equivalence of lifetimes, then the 35-times larger exposure of human tissues to carcinogens that results from a lifetime of doses scaled by mg/$W^{3/4}$/day results in an equal lifetime cancer risk because the affected physiological processes of carcinogenesis themselves are operating more slowly (by assumption, 35-times more slowly). A given span of clock time that a tissue spends under a given concentration regime yields less risk in a human (since the tissue has spent less "pharmacodynamic time" exposed).

It should be clear that not every empirical measure of "internal dose" is equally informative about species differences. As noted earlier, the amount of a dose metabolically activated, for example, may be equal in a mouse and a human, but the human's AUC of metabolite at the target may be much larger. If an empirical measurement or modeled result is to be used as a surrogate for "internal dose" in a cross-species extrapolation, its value in animals and humans should be compared to the predictions of the default assumptions of allometrically scaled pharmacokinetics (which should be aided by a full analysis of the uncertainties in the available data and of reasonably likely alternative pharmacokinetic modeling approaches). With this kind of analysis, it is possible to judge whether those default assumptions have actually been contradicted by data for the case at hand.

Once again it should be stressed that the arguments set out here are intended as defaults. They attempt to gauge the expected effect of known major cross-species trends in the rates and magnitudes of the underlying physiological processes, both in the internal disposition of a dose and its subsequent carcinogenic effect. Just as the pharmacokinetic presumptions may be able to be replaced with sufficiently validated case-specific modeling, the pharmacodynamic presumptions may be replaced with suitable biologically based dose-response models. The true pharmacodynamic situation is clearly more complex than represented here. In particular, there may be dose-rate effects, in which higher concentrations have more-than-proportionally stronger effect (Hattis, 1990). The effect of one moment's exposure may also depend on age or on the degree of exposure earlier in life. Such effects have no generalizable patterns, however, and cannot serve as a basis for default scaling of effects. Again, we seek a simple default principle to guide our expectations, while allowing for the use of case-specific experimental or epidemiologic insights (when available) to improve the estimate based on the simplifying assumptions.

It should also be pointed out that this scheme, with its explicit treatment of time, pharmacokinetics, and pharmacodynamics, provides a conceptual framework for examining such crucial emerging issues as risks from partial lifetime exposures, potencies in children vis-à-vis adults, and other similar questions. Failing to provide such an explicit argument from stated assumptions dooms a scaling factor to be inapplicable to such questions and provides no means for incorporating biological insights, such as data on pharmacokinetics and mechanism of action, when they are available.

III. Discussion

This proposal aims at arriving at a very broad generalization about carcinogen exposures that can be considered of equal risk in experimental animals and humans—one that can be applied to potentially carcinogenic chemicals lacking adequate information on pharmacokinetics and mechanisms of action. It attempts to provide a rational basis for a *prima facie* characterization of potential risks in humans, consistent with our empirical knowledge of carcinogen potencies in animals and humans and with the known general consequences of species variation in body size and the rates of physiological processes.

To achieve this wide applicability and generality, it is necessary to rely on simplified, broad patterns and trends of biological variation, while bypassing many details and causes of case-by-case variation. This is not to deny the importance of these details, nor to denigrate the value of case-specific data that show species- or dose-related differences in uptake, metabolism, or physiological actions of putative carcinogenic agents. To the contrary, the intention is to provide a framework for the use of such data, allowing (and indeed, encouraging) one to go beyond the *prima facie* case based on overall trends to address the impact of specific knowledge about the chemical and its actions.

The empirical data on carcinogen potencies estimated in various animal species and in humans demonstrate the large variability involved. Although scaling doses by $W^{3/4}$, as proposed herein, characterizes the trend fairly well, individual chemicals may deviate from this overall pattern by two orders of magnitude or more in either direction. In the case of the allometric arguments, there are dozens of points in the chain of inference where one could raise counterexamples to simplifying assumptions, arguing that the generalized $W^{3/4}$ scaling method thereby would over- or underestimate human risks for that case. For example, Gillette (1985) lists a number of physiological factors with high variability that would influence the accuracy of extrapolation of a dose's toxicity to an exposed human, not the least of which is the 20-to-50-fold variation among individual humans in their ability to take up and metabolize an agent and to repair any resulting damage.

The existence of such underlying variation means that the extrapolation of chemically induced risks observed in one circumstance (say, in a mouse lifetime cancer bioassay) to another (say, to people exposed to environmental pollutants) needs to be carefully and properly interpreted. Clearly, the projection of an equivalent dose is not merely a conversion of units, with the resulting human dose achieving an equal factual standing to the original animal observation. The projection is an

hypothesis, formulated in the face of uncertainty. In the most basic case—when there is little additional information that may be brought to bear—this hypothesis is framed in terms of the general features of anatomical and physiological differences among species that should affect all chemicals. It represents a best guess based on general principles and the recognition of overall trends. This best guess is surrounded by an envelope of considerable uncertainty, owing to the dozens of particulars that make each chemical's disposition and toxic effects in various species unique, despite the overall trends. When applicable pharmacokinetic and mechanistic insights into the particular chemical and its actions are available, they can (and should) be used to refine the projections by identifying and accounting for these chemical-specific factors.

Every projection of human equivalent dose, no matter how sophisticated, will have associated with it both uncertainty and variability. The uncertainty concerns whether the scaling method employed has correctly embodied and utilized the information at hand (be it general cross-species trends over all chemicals or case-specific insights from pharmacokinetics and mechanistic studies). The variability arises because even a sophisticated projection, when applied to a population of cases, will at best predict the mean of an array of actual values that reflect the myriad individual factors that no analysis can completely take into account. The "true" dose of equivalent risk will vary among exposed humans according to how each individual deviates from the overall human norm, owing to genetic factors, environmental influences, age, sex, lifestyle, and countless details of personal history.

The goal of a cross-species scaling methodology, then, is not to arrive at "true" values of equivalent does under all circumstances (for this is impossible, even in principle). Rather, it is to embody correctly and without bias the impact of the information at hand, providing rational estimates that take into account what is known, recognizing that true values will vary around this estimate as a result of case-by-case particulars, many of which are either unknown to vary among the individuals for whom the projections are being made.

The proposed scaling of daily administered doses of putative carcinogens by $W^{3/4}$ is intended to be such an unbiased projection; i.e., it is to be thought of as a "best" estimate rather than one with some conservatism built in to assure that any error is on the side of being overly protective. It should not be interpreted as a "safety factor" or other intentional bias designed to "err on the side of safety." Thus, it is to be expected that some individual compounds will have their human potencies overestimated by this procedure, while others will have them underestimated.

This having been said, it must be said, it must be acknowledged that there is considerable uncertainty about the best scaling method to achieve this unbiased projection. In particular, the empirical data on comparative carcinogen potencies are also compatible with both body weight and surface area scaling, the methodologies that we propose to abandon in favor of $W^{3/4}$ scaling. The $W^{3/4}$ scaling is chosen both to achieve unity of default methods and because it can be related to an explicit rationale based on allometric variation of the underlying anatomy and physiology. Former methodologies have not been shown to be false, however, and it is considered that risk assessments conducted under these methodologies are not in need of revision on account of any agreement to utilize a common methodology in the future.

The utility of the "physiological time" concept for understanding the patterns of cross-species differences in a carcinogen's action lies in its simplicity and generality. Because organ volumes tend to share a common pattern of allometric variation, while rates of physiological processes share another, the general predictions of cross-species differences is independent of specific hypotheses about target organs or mechanisms of action. One could, for instance, envisage an alternative allometric formulation that, rather than relying on overall patterns for unspecified organs in all mammals, focuses instead on the details of specific organs (common target organs or sites of metabolic transformation, say) in specific laboratory animal strains and in humans. For example, instead of relying on the approximation that breathing rates vary as $W^{3/4}$, one could make precise measurements of rates in B6C3F1 mice and in the humans whose risks are being evaluated. The utility of such an approach for a *default* scaling factor is doubtful, however, since the generality of the argument is lost, and the analysis becomes contingent on the details of the specific physiological hypothesis being elaborated. If such specificity is possible in an individual instance, it should become part of the case-specific pharmacokinetic and pharmacodynamic analysis that overrides the default methodology.

It is sometimes suggested that there should be more than one "default" scaling methodology, with different generalized procedures to be applied to different classes of chemical carcinogens. At present, it is not clear how such division of cases would be made, however, nor what the consequences on a generalized method should be. For example, tissue area-under-the-curve of the toxic moiety would seem to be the best *prima facie* dosimeter for the effects of both genotoxic and non-genotoxic carcinogens on their target organs. Similarly, the general allometric arguments for how AUCs are expected to vary across species apply both to agents active as the parent compound and to those requiring metabolic activation.

A possible exception to this pattern has been mentioned earlier. The generalized allometric pattern assumes that the rate of clearance of a metabolite from the target site of toxic action, like other rates, scales in proportion to $W^{3/4}$. If a compound acts through a very reactive metabolite that is spontaneously and fully deactivated by purely physical-chemical processes within the target tissue itself, then the rate of detoxification may be species-independent, and the AUC may be more related to the amount metabolized, which by default is expected to retain proportionality to body mass (Travis, 1990). Such a situation is not only plausible, it may be frequent. There is no particular indication from the empirical data, however, that different rules apply to metabolically activated compounds. Moreover, since the reactive intermediate scenario breaks the symmetry of the physiological time argument, it is difficult to know exactly what the carcinogenic consequences should be. This remains an important problematical area that requires future attention. For the present, however, there do not seem to be grounds for specifying when and how one should alter the default proposal.

The analysis presented herein is oriented around scaling doses so as to yield equal areas under the carcinogen's concentration curve at the target site. This definition of equivalence of target "doses" is in line with common practice. The AUC provides a measure of the agent's opportunity to interact with the target. Equal AUCs over a fixed time interval correspond to equal average concentrations of the agent during that interval. It should be borne in mind, however, that other measures of target

tissue dose might be more appropriate for specific mechanisms of carcinogenicity. For example, if a critical concentration must be reached or if there is a nonlinear dependence of toxic stress on concentration of the agent. Such alternative have no generalizable consequences or patterns, however, and there is no evident way to bring them into a default methodology. When case-specific pharmacokinetic analysis is undertaken, careful attention should also be paid to the measure of target tissue dose that is being considered to yield equivalent lifetime carcinogenic effect, and alternatives should be examined.

When AUCs from daily exposures are equal, then average concentrations of the agent at the target sites are equal. And when dosing producing equal daily average concentrations is continued for a lifetime, then average lifetime concentrations are equal. If one presumes that such average lifetime concentrations yield equal cancer risk, then the argument follows common practice and is in accord with the general finding that age-specific tumor incidence patterns tend to be congruent across species when expressed on a lifetime scale. (Other presumptions about the impact of such equal concentrations can be held, however.) The underlying biological basis for lifetime equivalence, and the conditions under which it might be violated, are not clear at present. This is an area in need of further investigation, and increased understanding will be key to determining how to scale the results of cell-kinetically based models of carcinogenesis from animal models to humans.

It should be borne in mind that the arguments for scaling doses by $W^{3/4}$ have been cast in very general terms to reflect constant, low-level, lifetime dosing and consequent lifetime cancer risks. Care should be taken when applying the methodology to specific exposure scenarios that deviate from this pattern. For example, the allometric arguments are adduced for variation among mammals. Other groups of animals have their own characteristic allometric patterns, but they are different than the mammalian ones. To extrapolate across classes of vertebrates with the proposed methodology, for example, would violate the basic presumption of the variation in a basically similar anatomical and physiological plan among differently sized mammals.

The allometric patterns relied on by the present argument represent variation *among species* for adult organisms. Allometric patterns among variously sized *individuals* of the same species can (and generally do) differ from the pattern seen from one species to another. The metabolic and lifespan patterns across species do not really describe variation among differently sized humans, for example. In other words, the scaling arguments presented here do not necessarily apply for the adjustment of doses to larger and smaller humans. In such cases, it is probably preferable to use mg/kg scaling (although the difference between this and $W^{3/4}$ scaling is minor). Similarly, the allometric patterns describing the changes within an individual as he or she grows and matures from child to adult generally differ from both the cross-species pattern and from the variation among differently sized adults. Compared to adults, children do have faster metabolic rates and greater intakes of food, water and air per unit of body weight, but these relations are not well described by proportionality $W^{3/4}$, as they are across species. Moreover, children also have proportionally faster rates of cell division (i.e., both pharmacokinetic and pharmacodynamic time are accelerated compared to adults). This a complex and problematic issue that is beyond the scope of the present document. It is deserving of further study. At present, it seems most reasonable to follow current practice, i.e., to scale doses for adults and children (and for differently sized adults) on a mg/kg basis. For similar reasons, the present scaling arguments provide no special insight into the problem of partial lifetime exposures.

Finally, it should be borne in mind that the scaling arguments are made for similar levels and patterns of exposure in animals and humans. When experimental animals are exposed to much higher levels than humans (as is common in carcinogenicity bioassays) there is the possibility of saturation of metabolism in animals that is not shared with human exposures. Such effects will obscure the usual pattern of equivalence of internal doses projected on the assumption of similar exposure regimes. In other words, dose scaling cannot solve the high-to-low-dose extrapolation problem, which must be addressed by other means. Case-specific pharmacokinetic analysis can, however, provide very valuable insight into differences in target tissue doses between rodents at high bioassay exposures and humans at much lower exposures.

IV. Conclusions

This notice is an announcement of a consensus reached by the Environmental Protection Agency, the Food and Drug Administration, and the Consumer Product Safety Commission to consider that lifetime cancer risks will be presumed to be equal when daily amounts administered are in proportion to body weight raised to the 3/4 power. It should be reiterated that former methodologies have not been shown to be in error, and this agreement should not be construed as overturning those practices with one of superior scientific validity.

The empirical data on comparative carcinogenic potencies in different species support the general practice of scaling rodent potencies to humans, and show that, on average, current methods perform rather well. The data are not of sufficient resolution, however, to distinguish between surface area and body weight dose scaling. The data are fully consistent with the proposal contained herein for scaling by body weight to the 3/4 power.

Theoretical support for scaling carcinogen doses by the 3/4 power of body weight is available from analysis of the allometric variation of key physiological parameters across mammalian species. Such an analysis has the benefit of providing an articulated rationale for the scaling methodology and of setting out the underlying assumptions explicitly.

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federal register

Friday
June 5, 1992

Part VI

Environmental Protection Agency

Premanufacture Notices; Monthly Status Report for MAY 1992

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS-53155; FRL 4071-3]

Premanufacture Notices; Monthly Status Report for MAY 1992

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(d)(3) of the Toxic Substance Control Act (TSCA) requires EPA to issue a list in the **Federal Register** each month reporting the premanufacture notices (PMNs) and exemption request pending before the Agency and the PMNs and exemption requests for which the review period has expired since publication of the last monthly summary. This is the report for May 1992.

Nonconfidential portions of the PMNs and exemption request may be seen in the TSCA Public Docket Office NE-G004 at the address below between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

ADDRESSES: Written comments, identified with the document control number "(OPPTS-53155)" and the specific PMN and exemption request number should be sent to: Document Processing Center (TS-790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., rm. 201ET, Washington, DC 20460, (202) 260-1532.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. E-545, 401 M St., SW., Washington, DC 20460 (202) 260-3725.

SUPPLEMENTARY INFORMATION: The monthly status report published in the **Federal Register** as required under section 5(d)(3) of TSCA (90 Stat. 2012 (15 U.S.C. 2504)), will identify: (a) PMNs received during May; (b) PMNs received previously and still under review at the end of May; (c) PMNs for which the notice review period has ended during May; (d) chemical substances for which EPA has received a notice of commencement to manufacture during May; and (e) PMNs for which the review period has been suspended. Therefore, the May 1992 PMN Status Report is being published.

Dated: June 1, 1992.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

Premanufacture Notice Monthly Status Report for MAY 1992.

I. 178 Premanufacture notices and exemption requests received during the month:

PMN No.

P 92-0810	P 92-0822	P 92-0823	P 92-0824
P 92-0825	P 92-0826	P 92-0827	P 92-0828
P 92-0829	P 92-0832	P 92-0833	P 92-0834
P 92-0835	P 92-0836	P 92-0837	P 92-0838
P 92-0839	P 92-0840	P 92-0841	P 92-0843
P 92-0844	P 92-0845	P 92-0846	P 92-0847
P 92-0848	P 92-0849	P 92-0850	P 92-0851
P 92-0852	P 92-0853	P 92-0854	P 92-0855
P 92-0856	P 92-0857	P 92-0858	P 92-0859
P 92-0860	P 92-0861	P 92-0862	P 92-0863
P 92-0864	P 92-0865	P 92-0866	P 92-0867
P 92-0868	P 92-0869	P 92-0870	P 92-0871
P 92-0872	P 92-0873	P 92-0874	P 92-0875
P 92-0876	P 92-0877	P 92-0878	P 92-0879
P 92-0880	P 92-0881	P 92-0882	P 92-0883
P 92-0884	P 92-0885	P 92-0886	P 92-0887
P 92-0888	P 92-0889	P 92-0890	P 92-0891
P 92-0892	P 92-0893	P 92-0894	P 92-0895
P 92-0896	P 92-0897	P 92-0898	P 92-0899
P 92-0900	P 92-0901	P 92-0902	P 92-0903
P 92-0904	P 92-0905	P 92-0906	P 92-0907
P 92-0908	P 92-0909	P 92-0910	P 92-0911
P 92-0912	P 92-0913	P 92-0914	P 92-0915
P 92-0916	P 92-0917	P 92-0918	P 92-0919
P 92-0920	P 92-0921	P 92-0922	P 92-0923
P 92-0924	P 92-0925	P 92-0926	P 92-0927
P 92-0928	P 92-0929	P 92-0930	P 92-0931
P 92-0932	P 92-0933	P 92-0934	P 92-0935
P 92-0936	P 92-0937	P 92-0938	P 92-0939
P 92-0940	P 92-0941	P 92-0942	P 92-0943
P 92-0944	P 92-0945	P 92-0946	P 92-0947
P 92-0948	P 92-0949	P 92-0950	P 92-0951
P 92-0952	P 92-0953	P 92-0954	P 92-0955
P 92-0956	P 92-0957	P 92-0958	P 92-0959
P 92-0960	P 92-0961	P 92-0962	P 92-0963
P 92-0964	P 92-0965	P 92-0966	P 92-0967
P 92-0968	P 92-0969	P 92-0970	P 92-0971
P 92-0972	P 92-0973	P 92-0974	P 92-0975
P 92-0976	P 92-0977	P 92-0978	P 92-0979
P 92-0980	P 92-0981	P 92-0982	P 92-0983
P 92-0984	P 92-0985	P 92-0986	P 92-0987
P 92-0988	P 92-0989	P 92-0990	P 92-0991
P 92-0992	P 92-0993	P 92-0994	P 92-0995
P 92-0996	P 92-0997	Y 92-0136	Y 92-0137
Y 92-0138	Y 92-0139		

II. 359 Premanufacture notices received previously and still under review at the end of the month:

PMN No.

P 83-0237	P 84-0660	P 84-0704	P 85-0433
P 85-0612	P 85-0619	P 85-1184	P 86-0006
P 86-0334	P 86-0335	P 86-1315	P 86-1489
P 86-1607	P 87-0323	P 87-1872	P 88-0998
P 88-1271	P 88-1272	P 88-1273	P 88-1274
P 88-1460	P 88-1682	P 88-1753	P 88-1937
P 88-1938	P 88-1980	P 88-1982	P 88-1984
P 88-1985	P 88-1999	P 88-2000	P 88-2001
P 88-2100	P 88-2169	P 88-2212	P 88-2213
P 88-2228	P 88-2229	P 88-2230	P 88-2236
P 88-2484	P 88-2518	P 88-2529	P 89-0254
P 89-0321	P 89-0396	P 89-0538	P 89-0632
P 89-0676	P 89-0721	P 89-0769	P 89-0770
P 89-0775	P 89-0836	P 89-0837	P 89-0867
P 89-0957	P 89-0958	P 89-0959	P 89-0963
P 89-1038	P 89-1058	P 89-1062	P 90-0002
P 90-0009	P 90-0158	P 90-0159	P 90-0211
P 90-0237	P 90-0248	P 90-0249	P 90-0260
P 90-0261	P 90-0262	P 90-0263	P 90-0372
P 90-0441	P 90-0550	P 90-0558	P 90-0564
P 90-0581	P 90-0606	P 90-1280	P 90-1318
P 90-1319	P 90-1320	P 90-1321	P 90-1322
P 90-1358	P 90-1422	P 90-1527	P 90-1528
P 90-1529	P 90-1530	P 90-1531	P 90-1564
P 90-1592	P 90-1635	P 90-1687	P 90-1745
P 90-1840	P 90-1893	P 90-1937	P 90-1984
P 90-1985	P 91-0004	P 91-0043	P 91-0051
P 91-0101	P 91-0102	P 91-0107	P 91-0108
P 91-0109	P 91-0110	P 91-0111	P 91-0112
P 91-0113	P 91-0118	P 91-0228	P 91-0242
P 91-0243	P 91-0244	P 91-0245	P 91-0246
P 91-0247	P 91-0248	P 91-0288	P 91-0328
P 91-0358	P 91-0442	P 91-0464	P 91-0465
P 91-0466	P 91-0467	P 91-0468	P 91-0469
P 91-0470	P 91-0471	P 91-0472	P 91-0487
P 91-0490	P 91-0501	P 91-0503	P 91-0514
P 91-0521	P 91-0532	P 91-0548	P 91-0572
P 91-0584	P 91-0619	P 91-0659	P 91-0665
P 91-0666	P 91-0688	P 91-0689	P 91-0701
P 91-0732	P 91-0818	P 91-0826	P 91-0853
P 91-0914	P 91-0915	P 91-0934	P 91-0939
P 91-0940	P 91-0941	P 91-0968	P 91-1000
P 91-1009	P 91-1010	P 91-1011	P 91-1012
P 91-1013	P 91-1014	P 91-1015	P 91-1077
P 91-1116	P 91-1117	P 91-1118	P 91-1131
P 91-1163	P 91-1190	P 91-1191	P 91-1206
P 91-1210	P 91-1243	P 91-1279	P 91-1280
P 91-1281	P 91-1282	P 91-1283	P 91-1289
P 91-1297	P 91-1298	P 91-1299	P 91-1321
P 91-1322	P 91-1323	P 91-1324	P 91-1328
P 91-1346	P 91-1367	P 91-1368	P 91-1369
P 91-1371	P 91-1372	P 91-1379	P 91-1384
P 91-1386	P 91-1394	P 91-1409	P 91-1456
P 91-1464	P 92-0002	P 92-0003	P 92-0031
P 92-0032	P 92-0033	P 92-0034	P 92-0035
P 92-0036	P 92-0044	P 92-0048	P 92-0066
P 92-0067	P 92-0068	P 92-0129	P 92-0156
P 92-0157	P 92-0159	P 92-0168	P 92-0177
P 92-0217	P 92-0244	P 92-0245	P 92-0246
P 92-0247	P 92-0248	P 92-0249	P 92-0250
P 92-0251	P 92-0266	P 92-0283	P 92-0294
P 92-0298	P 92-0314	P 92-0315	P 92-0329
P 92-0341	P 92-0343	P 92-0344	P 92-0396
P 92-0412	P 92-0445	P 92-0446	P 92-0471
P 92-0474	P 92-0475	P 92-0476	P 92-0477
P 92-0478	P 92-0492	P 92-0496	P 92-0505
P 92-0509	P 92-0531	P 92-0532	P 92-0533
P 92-0545	P 92-0546	P 92-0547	P 92-0548
P 92-0549	P 92-0550	P 92-0551	P 92-0552
P 92-0554	P 92-0562	P 92-0564	P 92-0595
P 92-0599	P 92-0606	P 92-0624	P 92-0625
P 92-0628	P 92-0635	P 92-0648	P 92-0649
P 92-0652	P 92-0655	P 92-0656	P 92-0657
P 92-0658	P 92-0659	P 92-0660	P 92-0667
P 92-0681	P 92-0683	P 92-0686	P 92-0688
P 92-0690	P 92-0691	P 92-0692	P 92-0696
P 92-0697	P 92-0698	P 92-0699	P 92-0710
P 92-0711	P 92-0714	P 92-0733	P 92-0743
P 92-0744	P 92-0745	P 92-0748	P 92-0755
P 92-0769	P 92-0772	P 92-0774	P 92-0776
P 92-0777	P 92-0779	P 92-0781	P 92-0782
P 92-0783	P 92-0785	P 92-0786	P 92-0787
P 92-0789	P 92-0790	P 92-0792	P 92-0793
P 92-0794	P 92-0796	P 92-0797	P 92-0798
P 92-0800	P 92-0802	P 92-0803	P 92-0804
P 92-0805	P 92-0806	P 92-0807	P 92-0808

P 92-0809	P 92-0811	P 92-0812	P 92-0813
P 92-0814	P 92-0815	P 92-0816	P 92-0817
P 92-0818	P 92-0819	P 92-0820	P 92-0821
P 92-0830	P 92-0831	P 92-0842	

III. 198 Premanufacture notices and exemption request for which the notice review period has ended during the month. (Expiration of the notice review period does not signify that the chemical has been added to the Inventory).

PMN No.

P 85-0619	P 88-2196	P 88-2212	P 88-2213
P 88-2228	P 88-2229	P 88-2230	P 88-2236
P 88-2484	P 88-2518	P 88-2529	P 90-0260
P 90-1422	P 90-1720	P 90-1722	P 90-1723
P 90-1745	P 91-0230	P 91-0231	P 91-0232
P 91-0233	P 91-0689	P 91-1000	P 91-1116
P 91-1117	P 91-1118	P 91-1161	P 91-1163
P 91-1190	P 91-1191	P 91-1279	P 91-1280
P 91-1281	P 91-1282	P 91-1283	P 91-1297
P 91-1298	P 91-1299	P 91-1328	P 92-0001
P 92-0002	P 92-0044	P 92-0066	P 92-0067
P 92-0068	P 92-0156	P 92-0157	P 92-0159
P 92-0168	P 92-0177	P 92-0217	P 92-0266
P 92-0471	P 92-0472	P 92-0473	P 92-0477
P 92-0478	P 92-0479	P 92-0480	P 92-0481
P 92-0482	P 92-0483	P 92-0484	P 92-0485
P 92-0486	P 92-0487	P 92-0488	P 92-0489
P 92-0490	P 92-0491	P 92-0493	P 92-0494
P 92-0495	P 92-0496	P 92-0497	P 92-0498
P 92-0499	P 92-0500	P 92-0501	P 92-0502
P 92-0503	P 92-0504	P 92-0506	P 92-0507
P 92-0508	P 92-0510	P 92-0511	P 92-0512
P 92-0513	P 92-0514	P 92-0515	P 92-0516
P 92-0517	P 92-0518	P 92-0519	P 92-0520
P 92-0521	P 92-0522	P 92-0523	P 92-0524
P 92-0525	P 92-0526	P 92-0527	P 92-0528
P 92-0529	P 92-0530	P 92-0534	P 92-0535
P 92-0536	P 92-0537	P 92-0538	P 92-0539
P 92-0540	P 92-0541	P 92-0542	P 92-0543
P 92-0544	P 92-0553	P 92-0554	P 92-0555
P 92-0556	P 92-0557	P 92-0558	P 92-0559
P 92-0560	P 92-0561	P 92-0563	P 92-0565
P 92-0566	P 92-0567	P 92-0568	P 92-0569
P 92-0570	P 92-0571	P 92-0572	P 92-0573
P 92-0574	P 92-0575	P 92-0576	P 92-0577
P 92-0578	P 92-0579	P 92-0580	P 92-0581
P 92-0582	P 92-0583	P 92-0584	P 92-0585
P 92-0586	P 92-0587	P 92-0588	P 92-0589
P 92-0590	P 92-0591	P 92-0592	P 92-0593
P 92-0594	P 92-0595	P 92-0596	P 92-0597
P 92-0598	P 92-0599	P 92-0600	P 92-0601
P 92-0602	P 92-0603	P 92-0604	P 92-0605
P 92-0607	P 92-0608	P 92-0609	P 92-0610
P 92-0611	P 92-0612	P 92-0613	P 92-0614
P 92-0615	P 92-0616	P 92-0617	P 92-0618
P 92-0619	P 92-0620	P 92-0621	P 92-0622
P 92-0647	P 92-0718	Y 92-0126	Y 92-0127
Y 92-0128	Y 92-0129	Y 92-0130	Y 92-0131
Y 92-0132	Y 92-0133	Y 92-0134	Y 92-0135
Y 92-0136	Y 92-0137		

IV. 46 Chemical Substances for Which EPA Has Received Notices of Commencement To Manufacture

PMN No.	Identity/Generic Name	Date of Commencement
P 80-0018	1-Nitrobenzolyl-1(4-carboxypyridyl)hydrazide	January 7, 1982.
P 81-0250	G Disubstituted benzenamine	October 25, 1983.
P 84-0660	G Substituted aryl olefin	February 9, 1988.
P 84-0704	G Substituted alkyl arene	January 24, 1988.
P 85-1198	Amine functional acrylic terpolymer	March 12, 1992.
P 87-1707	G Quaternized fatty amidoamine	October 17, 1988.
P 88-1267	G Hydrazine derivative	November 22, 1988.
P 88-1569	Graft copolymer of polyvinyl alcohol with acrylamide, acrylic acid and alky acetoacetate	January 16, 1991.
P 88-1570	Copolymer of acrylamide and 2*H*-hydroxypropyl methacrylate	June 11, 1991.
P 89-0236	4-Dibenzylamino-2-methyl benzldehyde-diphenyl hydrazone	August 10, 1991.
P 89-0471	G Substituted hydrazinopyrazole	July 1, 1989.
P 89-0653	G Copolymer	October 31, 1989.
P 90-0594	G Substituted hydrazine	January 23, 1991.
P 90-1699	G Metal carbonyl carboxylate	March 18, 1992.
P 91-0052	G Polyolefin amino ester salt	April 13, 1991.
P 91-0076	1,1-Dimethyl-1-(2-hydroxypropyl)amine methacrylimide	April 16, 1991.
P 91-0507	Mixture of pyridinium,3-carboxy-1-(4-((4-chloro-3-sulfophenyl)amino-6-((5-hydroxy-6-((4-methoxy-2-sulfophenyl)azo)-7-sulfo-2-naphthaleny)amino)-1,3,5-triazrin-2yl)-hydroxy, inner salt, potassium sodium salt,2-naphthalenesulfonic acid, 7-((4-chloro-6-((4-chloro-3-sulfophenyl)amino)1,3,5-triazrin-2-yl)amino)-4-hydroxy-3-((4-methoxy-2-sulfophenyl)azo-, potassium sodium salt and 2-naphthalenesulfonic acid, 7-((4-hydroxy-6-((4-chloro-3-sulfophenyl)amino)-4-hydroxy-3-((4-methox-2-sulfophenyl)azo-, potassium sodium salt.	December 5, 1991.
P 91-0616	G Neopentyl glycol diisostearate	April 2, 1992.
P 91-1143	G Acrylic copolymer	March 27, 1992.
P 91-1244	G Acrylic-silicone : graft polymer	March 5, 1992.
P 91-1245	G Diphenol Dicyanate homopolymer	March 29, 1992.
P 91-1268	G Tall oil fatty acids, aliphatic dicarboxylic acid, aliphatic polyol, oxyalkylene alkyd	March 31, 1992.
P 91-1294	G Acrylate/anhydride copolymer	March 8, 1992.
P 91-1347	G Quaternary ammonium perfluoroalkyl carboxylate	March 18, 1992.
P 91-1418	G Modified hydrocarbon resin	April 2, 1992.
P 92-0021	G Sulfonated azo dye with monochlorotriazine groups, copper complex; potassium, sodium salt	April 3, 1992.
P 92-0057	G Silica supported magnesium-titanium catalyst	March 15, 1992.
P 92-0062	G Phenolic resin	April 7, 1992.
P 92-0151	G Modified gelatin	March 23, 1992.
P 92-0231	G Polyurethane	April 9, 1992.
P 92-0237	G Spirocyclic alkane ketone	April 20, 1992.
P 92-0260	G Polymeric colorant	April 3, 1992.
P 92-0276	G Amino silicone	March 29, 1992.
P 92-0279	G Styrenated hydroxy functional acrylic	March 25, 1992.
P 92-0306	G Aluminum alkoxide chelate	March 20, 1992.
P 92-0321	G Aliphatic amine, epoxy adduct	March 30, 1992.
P 92-0322	G Acrylic polymer	April 14, 1992.
P 92-0377	G Acetamide derivative	April 6, 1992.
Y 87-0062	G acrylamide acrylate copolymer	March 18, 1992.
Y 90-0104	Rosin; maleic anhyride; pentacrythritol; nonyl phenol; p-tert-butylphenol; paraformaldehyde; bisphenol A	February 21, 1990.
Y 90-0241	G Acrylic polymer	March 18, 1992.
Y 91-0147	G Acrylid modified soya/linseed polymer	March 23, 1992.
Y 92-0001	Tall oil fatty acids; sorbitol; glycerine; phthalicanhydrie; maleic anhydride	March 25, 1992.
Y 92-0097	G Polyester of hexanediol, trimethyl propane and mixed aliphatic acids	March 20, 1992.
Y 92-0103	G Alkyd resin, styrenated	March 14, 1992.
Y 92-0104	Conjugated linoleic acid; styrene; acrylic acid; methyl methacrylate	April 4, 1992.

V. 9 Premanufacture notices for which the period has been suspended.

PMN No.

P 92-0477 P 92-0478 P 92-0492 P 92-0505
P 92-0509 P 92-0562 P 92-0564 P 92-0606
P 92-0652

[FR Doc. 92-13218 Filed 6-4-92; 8:45 am]
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S. 2569/P.L. 102–297

To provide for the temporary continuation in office of the current Deputy Security Advisor in a flag officer grade in the Navy. (June 2, 1992; 106 Stat. 216; 1 page) Price: $1.00

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